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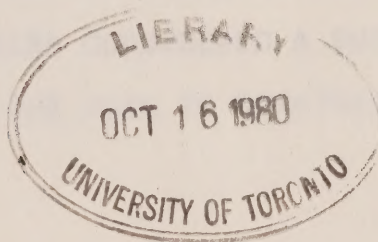
Government
Publications

THE FIRST MINISTERS' CONFERENCE

OTTAWA

BY THE HONOURABLE J. ANGUS MACLEAN

PREMIER OF PRINCE EDWARD ISLAND



SEPTEMBER 8, 1980

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MR. CHAIRMAN, FELLOW PREMIERS

I BELIEVE IT IS IMPORTANT THAT WE PLACE OUR TASK IN PROPER PERSPECTIVE. IT IS, FIRST OF ALL, A GREAT MISTAKE TO REGARD REVISION OR PATRIATION OF THE CONSTITUTION AS A CURE FOR THE NATIONS ILLS, AS THOUGH BY SOME CLEVER CONSTITUTIONAL SLIGHT OF HAND WE CAN SOLVE ALL THE SERIOUS PROBLEMS FACING US AS CANADIANS.

IT IS A MISTAKE TO CONCLUDE THE CONSTITUTION HAS FAILED WHEN IN MANY INSTANCES WE SHOULD BE FACING UP TO OUR OWN RECORD OF FAILURE AND MISMANAGEMENT. MANY OF OUR CANADIAN PROBLEMS ARE NOT CONSTITUTIONAL ONES; RATHER, THEY ARE POLITICAL PROBLEMS RESULTING FROM THE MISUSE OF POLITICAL POWER BY A SUCCESSION OF FEDERAL GOVERNMENTS WHICH HAVE FOR MANY YEARS VIEWED CANADA FROM THE BANKS OF THE OTTAWA RIVER.

I SHOULD ALSO LIKE TO SAY THAT I FIND IT DISTASTEFUL, MR. CHAIRMAN, TO FIND MYSELF IN A POSITION OF BEING CONSIDERED A SUSPECT CANADIAN BECAUSE I DO NOT SUPPORT THE RUSH TO REPATRIATE THE CONSTITUTION.

IT MUST BE SAID AGAIN, MR. CHAIRMAN: CANADA IS MUCH MORE THAN OUR FEDERAL GOVERNMENT. WE AS PROVINCES HAVE VIEWS AND PERSPECTIVES WHICH ARE INTEGRAL TO OUR NATIONAL WELL BEING. BEING CAST



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AS OPPONENTS TO SOME SUPPOSED NATIONAL WILL IS AS UNCOMFORTABLE AS IT IS UNREASONABLE.

A CONSTITUTIONAL VIEW IS BY DEFINITION A LONG VIEW. CONSTITUTIONS ARE NOT DEvised TO ACCOMMODATE SOME FLEETING MOMENT IN HISTORY.

WE MUST BE CAREFUL NOT TO MAKE THE NATION A CAPTIVE OF OUR OWN LIMITED HORIZONS, OR ATTEMPT TO FORCE HISTORY INTO A PRECONCEIVED MOLD. AND WE MUST BE CAREFUL THAT WE DO NOT RESTRICT UNNECESSARILY THE ABILITY OF FUTURE GENERATIONS OF CANADIANS TO DECIDE WHAT IS BEST FOR THEM.

A CONSTITUTION MAY HAVE MANY PURPOSES, BUT IN THE PARLIAMENTARY TRADITION ITS ESSENTIAL FUNCTION IS NOT TO CIRCUMSCRIBE DEMOCRATIC FREEDOM, BUT TO ENSURE ITS SURVIVAL.

THE CHANGES WE MAKE MUST FLOW FROM A VISION OF THIS COUNTRY THAT IS GREATER THAN THE PRESENT NEEDS OF ANY PARTICULAR REGION OR PROVINCE. A VISION WHICH TRANSCENDS THE NARROW INTERESTS OF OUR OWN TIMES.

ONLY THIS TYPE OF LARGER VISION CAN INSPIRE THE SPIRIT OF GENEROSITY AND COMPROMISE, AND GENERATE THE MOMENTUM WHICH WILL BE NECESSARY IF MEANINGFUL CHANGE IS TO TAKE PLACE.

AS OPPOSED TO SOME SUPPOSED NATIONAL WILL IS AN INCONCEIVABLE
AS IT IS UNDESIRABLE.

A CONSTITUTIONAL VIEW IS BY DEFINITION A LATE VIEW. CONSTITUTIONS
ARE NOT DESIGNED TO ACCOMMODATE SOME FLEETING MOMENT IN HISTORY.

WE MUST BE CAREFUL NOT TO HAVE THE NATION A CAPTIVE OF ONE OR
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THE CHARGE WE HAVE MUST FOLLOW FROM A VIEW OF THIS CHARGE THAT
IT EXCEEDS THAT THE PRESENT NEEDS OF ANY PARTICULAR REGION OR
PROVINCE. A VIEW WHICH TRANSCENDS THE REGIONAL INTERESTS OF
OUR OWN TIME.

ONLY THIS TYPE OF LARGER VIEW CAN INSURE THE GROWTH OF
GENEROSITY AND COMPROMISE, AND GUARANTEE THE FUTURE WHICH
WILL BE NECESSARY IF DEMOCRATIC GOVERNMENT IS TO TAKE PLACE.

THE ENERGY AND FORCE OF A MAN DEPENDS ON THE FORCE OF THE IDEAS THAT ARE IN HIM. EQUALLY THE ENERGY OF A NATION FLOWS FROM THE QUALITY OF THE IDEAS THAT ARE AT THE CENTRE OF THE NATION. IF THOSE LARGE COMPELLING AND UNIFYING IDEAS ARE ABSENT FROM OUR DISCUSSIONS, IT SEEMS TO ME UNLIKELY THAT WE WILL BE SUCCESSFUL IN ACCOMPLISHING ANYTHING OF ENDURING WORTH.

OF ALL THE SUBJECTS BEING DISCUSSED PERHAPS NONE HAS BECOME MORE CONTROVERSIAL AND CONTENTIOUS THAN "POWERS OVER THE ECONOMY".

THE POSITION TAKEN BY THE FEDERAL GOVERNMENT IS THAT IT MUST INCREASE ITS CONTROL OVER THE ECONOMY IN ORDER TO MANAGE IT IN THE BEST INTEREST OF ALL CANADIANS.

THE APPEAL OF SUCH POSITION IS POWERFUL - ALMOST SEDUCTIVE. UNFORTUNATELY, ITS LOGIC IS LESS COMPELLING.

THE ENERGY AND FORCE OF A MAN DEPENDS ON THE FORCE OF THE IDEAS
THAT ARE IN HIM. EQUALLY THE ENERGY OF A NATION DEPENDS ON THE
QUALITY OF THE IDEAS THAT ARE AT THE SERVICE OF THE NATION. IF
THOSE IDEAS CONFLICT AND DIVIDE THE NATION AND ARE NOT
DISCussed, IT SEEMS TO ME UNLIKELY THAT WE WILL BE SUCCESSFUL
IN ACCOMPLISHING ANYTHING OF GREAT IMPORTANCE.

AT ALL THE SUBJECTS HERE DISCUSSED FORWARD WAS THE ESSENCE
OF CONTEMPORARY AND FUTURE THOUGHTS ON THE ECONOMY.

THE POINT FOR TAKEN BY THE FEDERAL GOVERNMENT IS THAT IT MUST
MAINTAIN ITS CONTROL OVER THE ECONOMY IN ORDER TO ENSURE IT IS
THE BEST INTERESTS OF THE COUNTRY.

THE ISSUE OF SUCH POSITION IS, HOWEVER, A MORE COMPLEX ONE.
UNFORTUNATELY, THE LOGIC IS NOT ALWAYS CLEAR.

THE RECORD OF THE LAST HUNDRED YEARS PLACES A SEVERE STRAIN ON THIS POINT OF VIEW. FOR A CENTURY THE FEDERAL GOVERNMENT HAS ENJOYED THESE BROAD GENERAL POWERS. DURING THAT PERIOD CERTAIN PARTS OF THE COUNTRY, INCLUDING MY OWN, HAVE EXPERIENCED SERIOUS AND CHRONIC ECONOMIC DIFFICULTIES. IN OTHER WORDS, A COMMON ECONOMY HAS COME TO MEAN THAT IT IS COMMON FOR SOME SECTIONS OF THE COUNTRY TO PROSPER, AND COMMON FOR OTHERS TO COPE WITH BUILT-IN ECONOMIC DISADVANTAGES.

LET ME GIVE ONE EXAMPLE. FOR A NUMBER OF YEARS THE MOST CONTENTIOUS ISSUE IN CANADIAN POLITICS HAS BEEN THE PRICING OF OIL AND GAS. THE FEDERAL GOVERNMENT, WITH SUPPORT FROM SOME PROVINCES, HAS ARGUED THAT THE NATIONAL INTEREST REQUIRES A UNIFORM PRICE FOR GAS AND OIL, WHICH IS LOWER THAN WORLD PRICES.

THIS POSITION HAS BEEN DEFENDED ON THE BASIS THAT CANADIAN MANUFACTURING MUST MAINTAIN A COMPETITIVE ADVANTAGE IN WORLD MARKETS, AND THAT ALL PROVINCES MUST BE TREATED EQUALLY. THIS ARGUMENT, OF COURSE, HAS THE SUPPORT OF THOSE PARTS OF THE COUNTRY IN WHICH THE MANUFACTURING SECTOR IS LOCATED.

BUT IF THIS IS A SOUND ARGUMENT WHEN APPLIED TO OIL AND GAS, WHY IS IT NOT APPLIED TO OTHER GOODS AND SERVICES? WHY IS IT NOT APPLIED TO ALL FORMS OF ENERGY? WHY, SPECIFICALLY, IS IT NOT APPLIED TO ELECTRICAL POWER? COULD IT BE RELATED TO THE FACT

THAT SO MUCH OF THE ELECTRICAL POWER IS GENERATED IN ONTARIO AND QUEBEC?

WHY HAS THE FEDERAL GOVERNMENT NOT SAID LONG BEFORE THIS THAT POWER COSTS OUGHT TO BE EQUALIZED RIGHT ACROSS THE COUNTRY? SUCH A POLICY WOULD CERTAINLY HELP TO EQUALIZE ECONOMIC OPPORTUNITY WITHIN THE COUNTRY. WE ALL KNOW THAT THE FEDERAL GOVERNMENT HAS THE POWER TO TREAT ELECTRICITY IN A MANNER SIMILAR TO OIL AND GAS. YET PRESENTLY, ISLAND PRODUCERS AND BUSINESSMEN PAY FROM 2 TO 3 TIMES AS MUCH FOR THEIR POWER AS THEIR COUNTERPARTS IN SEVERAL OF THE OTHER PROVINCES. THIS IS A CRIPPLING IMPEDIMENT TO OUR WHOLE PROVINCIAL ECONOMY, AND YET IN A MATTER AS FUNDAMENTAL AS THIS, THE FEDERAL GOVERNMENT HAS DONE LITTLE OR NOTHING TO RECTIFY THE PROBLEM.

COULD IT BE THAT BECAUSE OF THE NATURE OF PARLIAMENT THE CENTRAL GOVERNMENT HAS ONLY RESPONDED TO THE INTERESTS OF THOSE LARGE PROVINCES WHOSE INTEREST IN THE MATTER OF POWER GENERATION MIGHT BE AFFECTED? COULD IT BE THAT THE CENTRAL GOVERNMENT ONLY RESPONDS "IN THE NATIONAL INTEREST" WHEN THOSE WHO ARE ASKED TO MAKE CONCESSIONS ARE MINORITIES IN THE HOUSE OF COMMONS, BUT NEVER WHEN THOSE EXPECTED TO MAKE CONCESSIONS ARE THE NUMERICAL MAJORITIES.

COULD IT BE THAT IF WE HAD A TRULY FEDERAL STATE, IN WHICH ALL PARTNERS HAD A MORE SIGNIFICANT VOICE, NATIONAL POLICIES MIGHT MORE TRULY REFLECT THE INTERESTS OF ALL PROVINCES AND HENCE, THE ENTIRE COUNTRY.

EQUALIZATION IS ONE MEANS OF REDRESSING THE ECONOMIC INEQUALITIES WITHIN THE COUNTRY. IT IS IMPORTANT, HOWEVER, THAT WE RECOGNIZE EQUALIZATION FOR WHAT IT REALLY IS. IT IS FAR TOO SIMPLE-MINDED TO REGARD IT AS A MEANS WHEREBY THE WEALTHY INDUSTRIOUS PROVINCES SEND RELIEF TO THE SO CALLED "HAVE-NOT" PROVINCES. PRESUMABLY EQUALIZATION IS A MEANS OF PROVIDING SUSTENANCE TO THE UNDER-NOURISHED PARTS OF THE COUNTRY": A MEANS OF DISTRIBUTING CRUMBS - ALBEIT LARGE ONES - FROM THE RICH MAN'S TABLE.

THERE IS NOTHING WRONG WITH THIS, BUT SURELY THE REALLY IMPORTANT QUESTION WHICH MUST BE ADDRESSED IS WHY THOSE PARTS OF THE COUNTRY ARE UNDERNOURISHED TO BEGIN WITH. AS LONG AS THIS IS NOT ADDRESSED SERIOUSLY WHAT WE HAVE IS A SYSTEM WHICH IS CONTENT WITH TREATING THE SYMPTOMS OF THE ILLNESS, RATHER THAN PREVENTING IT.

PLEASE UNDERSTAND THAT I AM NOT QUESTIONING THE VALIDITY OF THE PRINCIPLE OF EQUALIZATION. I BELIEVE EMPHATICALLY THAT IT OUGHT TO CONTINUE AS AN INTEGRAL PART OF OUR FEDERAL SYSTEM. NONETHELESS THE SUBSTITUTION OF EQUALIZATION FOR SOUND ECONOMIC DEVELOPMENT IS A PRACTICE WHICH DOES IRREPARABLE HARM. IT CORRODES

THE MORALE AND SPIRIT OF THE AREA IN QUESTION, THEREBY IMPOVERISHING THE NATION GENERALLY; ALSO, IT PROMOTES FEELINGS OF RESENTMENT AND ALIENATION WHICH CAN EVENTUALLY TEAR THE COUNTRY APART.

IN SUMMARY, THE PRINCIPAL CONCERN OF PRINCE EDWARD ISLAND IN THIS PROCESS IS NOT TO ENFEEBLE THE CENTRAL GOVERNMENT. IT IS CLEAR, HOWEVER, THAT THERE DOES EXIST CURRENTLY A STRONG TREND TOWARDS PROVINCIAL RIGHTS. IF THIS MOVEMENT IS TO STOP SHORT OF DESTROYING THE BALANCE OF POWERS IN THE FEDERATION, THERE ARE TWO THINGS WHICH MUST HAPPEN -- AND SOON.

FIRST OF ALL, AS WE HAVE ALREADY SAID, THE FEDERAL GOVERNMENT MUST IMPROVE GREATLY ITS PERFORMANCE IN MANAGING THE AFFAIRS OF THE COUNTRY FOR THE BENEFIT OF ALL CANADIANS.

SECONDLY, THE FEDERAL GOVERNMENT IS UNLIKELY TO IMPROVE ITS PERFORMANCE UNTIL THE VOICES OF ALL THE PROVINCES ARE HEARD IN THE COUNCILS OF THE NATION. IN A FEDERAL STATE THIS IS OFTEN ACHIEVED THROUGH EQUAL REPRESENTATION OF THE CONSTITUENT PARTS IN A SECOND CHAMBER.

THIS WAS THE POSITION OF PRINCE EDWARD ISLAND DURING THE INITIAL CONSTITUTIONAL DISCUSSIONS IN 1864, AND IT IS THE POSITION WE HAVE PUT FORWARD THROUGHOUT THIS CURRENT ROUND OF TALKS.

IF WE ARE TO HAVE A TRUE FEDERATION, AND IF CERTAIN PROVINCES ARE NOT TO FEEL SWALLOWED UP IN THE UNION, THERE MUST BE SOME MECHANISM OR BODY IN WHICH THE EQUALITY OF THE CONSTITUENT PARTS IS PROCLAIMED. SURELY THE NATIONAL SPIRIT IS ENHANCED IF ALL THE PROVINCES ARE SOMEHOW RECOGNIZED AS EQUAL - NOT IN THEIR SIZE OR POPULATION - BUT IN THEIR VITALITY AND INDIVIDUALITY AS COMMUNITIES.

THIS WILL NOT RESULT IN ANY REAL REDUCTION IN THE POWERS OF THE LARGER PROVINCES. THE PRINCIPLE OF REPRESENTATION BY-POPULATION IN THE HOUSE OF COMMONS IS AN ADEQUATE, FINAL SAFEGUARD OF THEIR INTERESTS. WHAT IT WILL RESULT IN IS A FORUM WHERE THE INTERESTS OF ALL PROVINCES WILL BE HEARD EQUALLY.

IF THIS EQUALITY IS ACKNOWLEDGED IT SPEAKS ELOQUENTLY OF THE GENEROSITY OF SPIRIT WHICH IS AT THE CENTRE OF OUR NATIONAL LIFE. IF IT CANNOT BE ACKNOWLEDGED THEN SURELY WHAT WE ARE SAYING IS THAT THE ONLY THING WHICH REALLY COUNTS IN CANADA IS SIZE AND POWER. THIS IS A DISQUIETING THOUGHT, NOT ONLY FOR THE SMALLER PROVINCES, BUT, BY IMPLICATION, FOR THE MANY MINORITY GROUPS WHICH ARE PART OF THE FABRIC OF THE NATION.

THE FEDERAL GOVERNMENT IS VOCAL IN ITS CONCERNS FOR MINORITIES WITHIN THE COUNTRY. IT SEEMS TO ME, HOWEVER, THAT THEY ARE VERY SELECTIVE IN THEIR DEFINING OF MINORITIES. THERE ARE A NUMBER OF BONE FIDE MINORITIES REPRESENTED AT THIS TABLE - THEY ARE CALLED PROVINCES. THE EIGHT SMALLEST PROVINCES INDIVIDUALLY - EVEN COLLECTIVELY - ARE A MINORITY WITHIN CANADA. THE RELUCTANCE OF THE FEDERAL GOVERNMENT TO MAKE EVEN THE MOST MODEST CONCESSIONS ON BEHALF OF THESE GROUPS IS DIFFICULT TO UNDERSTAND IN VIEW OF THEIR ALLEGED INTEREST.

IT SHOULD NOT BE ESPECIALLY DISCONCERTING TO ANY OF US THAT IN THIS IMMENSE, DIVERSE NATION WE ARE STILL UNCERTAIN ABOUT WHAT WE ARE AND WHAT WE WILL BECOME.

TO A GREAT EXTENT WE ARE STILL A NATION OF IMMIGRANTS, AND IMMIGRANTS' CHILDREN. CANADA, OF COURSE, IS A VERY NEW COUNTRY COMPARED TO THOSE OF THE OLD WORLD. IF WE WERE TO REPRESENT THE GRAND SWEEP OF TIME THAT HUMANS HAVE BEEN ON EARTH BY TWENTY-FOUR HOURS, EVEN THE EARLIEST IMMIGRANTS TO CANADA ARRIVED AT ABOUT TWENTY SECONDS TO MIDNIGHT. FOR THIS REASON CANADIANS ARE STILL IN THE PROCESS OF PUTTING DEEP ROOTS IN NEW SOIL. THAT WE HAVE NOT YET DEVELOPED THE STABLE, SECURE IDENTITY OF A MATURE NATION SHOULD NOT CONFOUND US. IT WOULD BE SURPRISING IF IT WERE OTHERWISE.

THE CHALLENGE OF THE MOMENT, SURELY, IS HOW SUCCESSFULLY WE ARE ABLE TO COPE WITH THE STRAINS OF OUR NATION ADOLESCENCE. IT MAY BE THAT WE WILL DISCOVER THAT WE DO NOT CHOOSE FREELY-TO LIVE TOGETHER AS WE HAVE IN THE PAST. IF THAT WERE TO HAPPEN IT WOULD NOT NECESSARILY BE DISASTEROUS. IT WOULD SIMPLY MEAN THAT IN A CHANGING WORLD NEW PATTERNS AND RELATIONSHIPS WERE PREFERRED OVER THE OLD.

ONE OF THE FACTS OF LIFE IN THE PROVINCE OF PRINCE EDWARD ISLAND IS THAT THERE EXISTS, SIMULTANEOUSLY, AN ARDENT AND LIVELY SENSE OF PROVINCIAL PRIDE, AND A DEEP ATTACHMENT AND COMMITMENT TO THE NATION. I CONSIDER THIS TO BE A MOST DESIRABLE AND ENLIGHTENED STATE OF AFFAIRS; AND, IF I MAY SAY SO, A PATTERN FOR WHAT WE ARE ATTEMPTING TO PRESERVE AND ENHANCE BY OUR DISCUSSIONS TOGETHER.

PRINCE EDWARD ISLAND COMES TO THE TABLE COMMITTED TO THIS END.

OPENING STATEMENT

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION



OTTAWA, SEPTEMBER 8-12, 1980.

For Saskatchewan -- for the government of Saskatchewan, but more to the point, for the people of Saskatchewan -- "resources" is the most important item on our agenda.

For Saskatchewan -- for Western Canada -- provincial ability to manage and tax resources is a key part of the Confederation bargain.

Our resources help to compensate for the lack of a significant manufacturing industry in the West. They give us a tool to help stabilize and diversify our economy. They are an important source of revenue for our provincial treasury. They allow us to provide the services our residents need.

Saskatchewan people know what it's like to live through the booms-and-busts of a one-crop economy. They remember the thirties when, to quote the words of the 1939 Rowell-Sirois report, "the people of Saskatchewan have suffered a reduction in income during the last decade which has been unparalleled in peacetime in any other civilized country."

They remember the years from 1968 to 1974 - not so long ago - when Saskatchewan suffered the greatest loss of population of any province in the peacetime history of Canada.

They know that, with wise management, resources can provide the key to a reasonable level of economic stability. That process has now begun.

Saskatchewan parents, like most parents, would like to have their children living near them. They remember the decades of exodus, when our young people were forced to move to British Columbia or Ontario to find work. They know that resources can provide the key to economic diversification, so that we can provide rewarding and satisfying jobs near home and family. That process has now begun.

But our ability to manage our resources, to create a more stable economy, has, in recent years, been seriously impaired. The rights of the provinces to regulate and tax their natural resources have been reinterpreted. By the federal government. By the Supreme Court of Canada.

As prices for resources have risen in recent years -- particularly for oil -- the federal government has moved in to

take a greater share of the revenues. The succession of federal moves is impressive:

- the unilateral decision to disallow the deduction of royalties paid to provincial governments for federal income tax purposes
- a controlled Canadian price for oil, which now stands at less than half the going price on world markets
- the federal export tax on oil
- the federal excise tax on gasoline
- and soon, we've been warned, a federal export tax on natural gas.

Resource revenues, we clearly understood, would be left to the provinces. Now, it seems, the federal government is prepared to leave resource revenues to the provinces, only so long as those revenues don't exceed a level arbitrarily determined by the federal government alone. Even less acceptable, in our view, some resources attract the federal eye; others do not.

Don't misunderstand me. Saskatchewan is prepared to share its wealth in the interests of all Canadians.

As our wealth from oil, say, grows, we should be expected to contribute more. But we should pay more because of the wealth, not because of the oil. In our view, all Canadians should share the burden of financing the federation, on the basis of ability to pay. That is our basic case: on the basis of ability to pay.

We think the ability to pay should be judged simply on a province's wealth, whether that wealth derives from non-renewable resources, from revenues generated from hydro power, from secondary manufacturing, from fisheries - from whatever source.

And, indeed, we have been doing our fair share -- more than our fair share. On every barrel of oil exported from Saskatchewan to the United States, the provincial government receives just over \$7.00; the industry receives just over \$7.00; the federal government -- through the export tax -- receives \$21.00 and this is after the recent oil price increases. Through its export tax alone, the federal government now receives \$500 million a year from Saskatchewan oil, more than all the oil revenues of the provincial government.

To illustrate my point further - since 1974, Saskatchewan has forgone revenues in excess of \$3.2 billion by the sale of its oil at less than the prevailing price in the international market. Of this amount, \$1.9 billion was a benefit to the citizens of eastern Canada who were buyers of Saskatchewan's crude and, \$1.3 billion was collected by the federal government by its oil export tax. In addition, the federal government collected about \$400 million in corporate income taxes from Saskatchewan's production, and about \$130 million from the special excise tax introduced in 1975. Thus since 1974 Saskatchewan has contributed to CANADA between \$3.5 and \$4 billion from its non-renewable oil resource. By comparison, since 1974, the government of Saskatchewan has collected \$1.8 billion in royalties and income taxes from the oil industry.

That, I submit, effectively redefines the provinces' exclusive jurisdiction over resources.

The second redefinition has been made by the Supreme Court of Canada.

In my view, the Supreme Court, in recent judgements, has been re-writing Canada's constitution in ways that are unacceptable to Saskatchewan, and I believe to most provinces. It has been changing the rules in ways that threaten to destroy a province's ability to manage and tax resources.

Take the case involving the government of Saskatchewan and Canadian Industrial Gas and Oil - CIGOL. In that case, the company challenged our government's right to levy a tax that would capture for the province, the windfall profits resulting from the sharp oil price increases which began in 1973.

The province won at the trial court level. We won, by a unanimous judgment, in the Saskatchewan Court of Appeal. But we lost in the Supreme Court of Canada.

We lost because the majority on the Supreme Court concluded -- for reasons that I and many others do not find convincing -- that the tax was indirect and hence beyond the powers of a province, and because it encroached upon the federal trade and commerce power.

Take another case -- the Central Canada Potash case -- in which Saskatchewan's pro-rationing regulations, introduced by the previous Liberal administration, were struck down.

Again, the Supreme Court of Canada, in ruling against the province, overturned a unanimous judgment of the Saskatchewan Court of Appeal.

Neither of these cases upheld any federal law. Rather, each of them struck down a provincial law and to that extent left the resource companies unregulated and untaxed by either federal or provincial law.

Those judgments have called into serious question the ability of provinces -- not just Saskatchewan, but all provinces -- to raise revenues from resources and to regulate their rate of production. Especially if those resources are sold outside the province, as almost all Saskatchewan resources are.

We do not deny federal power in the field of interprovincial trade. We do not deny federal power to tax resource revenue. How can we when that power is now being used to tax away the lion's share of oil revenue.

What we seek, then, is a specific constitutional change -- to clarify and confirm provincial rights over resources, and to establish more clearly the boundary between provincial powers over resources and federal powers over trade.

I want to be clear on one point. With respect to resources, Saskatchewan does not seek constitutional change so that we can do new and different things. We need constitutional change so that we can do, with certainty, the things we have done -- to manage and tax resources in the interests of the people of our province.

In the constitutional talks that took place from October, 1978 to February, 1979, governments made real progress toward a resolution of this complex issue. The First Ministers' Conference of February, 1979, had produced near agreement -- not unanimity on every point, to be sure, but near agreement -- on a so-called "best effort" draft on resources. That draft included:

- an express and exclusive grant of jurisdiction to provinces to manage and develop resources
- a provision that would permit provinces to levy both direct and indirect taxes on resource production, if they did so in a way that did not discriminate between provincial residents and other Canadians
- a provision that would permit provinces to legislate with respect to the export of resources from the province

- a provision on the federal trade and commerce power, to provide that it could override provincial laws only in certain specified circumstances of compelling national interest.

The "best effort" draft was the product of months of hard work and tough bargaining. It was perhaps not perfect on every point, but it made a fair stab at reconciling divergent interests in a way that was generally acceptable to all governments.

Then we came to the present round of constitutional discussions. When the Ministers' Committee began its work in July, provinces were informed by the federal government that it no longer supported key sections of the best effort draft. The express grant of jurisdiction was still acceptable. Access by provinces to indirect taxation was still acceptable. But the other key elements -- permitting provinces to pass laws which might affect extra-provincial exports -- would no longer wash. They were "off the table".

I don't want to belabour this point. But let me register my dismay that a government -- the federal government -- which has stressed the urgency of constitutional reform for years and which has pleaded the need for quick action, should itself adopt a position on a key item which it knew was certain to prevent agreement being reached. It was a position that seemed designed to pluck defeat from the jaws of victory!

I know that our Ministers, as their talks have progressed this summer, have been inching their way back toward the "best effort" draft, step after grudging step. I know that we now have back on the table a small part of the offers that had been withdrawn.

From Saskatchewan's point of view, that's not good enough. We continue to support the "best effort" draft of February 1979, itself a compromise document, as the basis for an agreement on resources. We continue to insist on the "best effort" draft as the starting point for negotiation this week.

Let me put this point as clearly as I can. No package of constitutional changes will be acceptable to Saskatchewan -- and, I say, to the people of Saskatchewan -- that does not include a clarification and confirmation of provincial rights to manage and tax resources.

I am here to talk. I am here to bargain in good faith. On

behalf of the people of Saskatchewan, I tell you I am not here willingly to relinquish what tens of thousands of Saskatchewan people see as the best hope for their future and for that of their children.

Government
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OPENING STATEMENT

SUPREME COURT OF CANADA

HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION



OTTAWA, SEPTEMBER 8-12, 1980.

OPENING STATEMENT
SUPREME COURT OF CANADA - p. 1

I want to take a moment to explain why I attach enormous importance to the issues facing us in our discussion on the Supreme Court.

I will speak here of the Supreme Court, not as the final court of appeal in ordinary civil and criminal law matters, but as the final arbiter in constitutional disputes and the final arbiter of legislative jurisdiction in a federal state.

The court's role in interpreting the constitution is fraught with difficulty.

That should be recognized at once.

The court discharges a judicial function. Agreed, it interprets the law. But it also discharges a political function. It makes law. True, the court is under the constitution. But, as a U.S. Chief Justice has said, "We are under a constitution but the constitution is what the judges say it is".

Clearly, if a constitution is easily amended, then in the task of interpretation judges can take a position of rigid legalism. They can interpret it as they would ordinary law, in the full knowledge that if the results are socially undesirable the constitution will be changed.

Just as clearly, if a constitution cannot easily be changed, the judges cannot take a position of rigid legalism unless they are prepared to accept what may be unpalatable political and social consequences.

Similarly, and perhaps this is saying the same thing, if a constitution is new it can usually be interpreted using a legalistic approach since the terms of the constitution will cover most contemporary situations. If, on the other hand, the constitution is old, and unamended in its fundamentals, as is Canada's, its language will be increasingly out of touch with contemporary reality and this language will, in effect, have to be rewritten by the judges in the course of interpretation.

Let me give just one example. In 1867, the framers of the B.N.A. Act of course did not anticipate the evolution of modern communications technology -- T.V., radio, satellites, fibre optics. The only mention of communication in the B.N.A. Act is the reference to "telegraphs". On that slim reed, courts through

judicial law-making have built a fully developed constitutional regime for communications, a regime which -- I note in passing -- has given virtually exclusive control to the federal government.

Some legal scholars would dispute this concept of judicial law-making, but I think it is clear that Supreme Courts do, in fact, make social and legal policy. The extent to which this is done and the extent to which it is explicit or admitted varies from court to court, from period to period, and from country to country.

The scope for judicial law-making will be considerably expanded if, as some propose, we entrench a Charter of Rights and constitutional prohibitions relating to the economic union. These will be clear invitations to the Court to make policy, to create new political accommodations.

In Canada, as in other federal states, the Supreme Court is such a lawmaker. It follows that the decisions of the Court on constitutional matters must be subjected to full and vigorous public discussion, as is the case with the decisions of other lawmakers. How else can the interested public have any voice in this law-making process? Of course care should be taken not to impugn the integrity of the Court or of individual judges. But we need not symbolically endow them with a character completely free of any philosophic position for fear of suggesting improper bias. That would be patently untrue.

Most of us, I suspect, would believe that the Supreme Court of Canada should approach its task openly recognizing the need to apply a principle of growth, or whatever name we want to give to the explicit recognition by the Court of the social and law-making content of its constitutional decisions.

But that is not free from difficulty, particularly in a federation like Canada. Some will argue that the role of the Court should be severely restricted. That appears to be the point of view of at least some members of the Quebec government. I quote from an article by Jacques-Yvan Morin, Quebec's Minister of Education, in the Canadian Bar Review:

"The essential raison d'etre of federalism, in a bi-national country like Canada, should be to protect the values and rights of the constituent groups and their autonomy, even against the will of the majority group. If you introduce into the

constitution a 'principle of growth', such as that which has been developed in the United States, and the techniques of interpretation which are corollaries of this principle, you can have no stability in constitutional matters and no feeling of security, at least in French Canada."

If, therefore, we opt for a constitutional Supreme Court with a broad mandate, which interprets the constitution according to a principle of growth -- and, with a rigid constitution, I see no alternative -- we had better be able to defend that Court against the arguments of people like Jacques-Yvan Morin. The principle of growth will need fully to take into account the sharp regional differences which are a fundamental aspect of Canada. Not only the differences between Quebec and the other provinces, but all regional differences.

That explains, I think, why governments and their advisory bodies have been thrashing around over the past few years in search of new formulas for the composition and powers of the Court and new methods for appointing Supreme Court justices. We have discussed formulas for explicit regional representation. We have discussed various schemes for provincial involvement in the appointment process, including the very complex and elaborate mechanism proposed in the Victoria Charter of 1971.

We have considered proposals, particularly from Quebec but also from Alberta, that would establish a constitutional court completely separate from the Court of final appeal in civil and criminal law matters.

On some of these issues we have made good progress.

We agree on the need to entrench the Supreme Court as part of the Canadian constitution, so that it will no longer be a creature solely of the federal government.

We agree, I believe, on the need to adopt a new procedure for the appointment of Supreme Court justices, one that will require the consent of the provinces from which the appointment is made.

We are close to agreement on methods to ensure that the Court reflects both of Canada's legal systems -- by accepting the principle of a guaranteed number of civil law judges for Quebec and by entrenching the practice of alternating the Chief Justice

between a Quebecker and a non-Quebecker.

In terms of the composition of the Court -- the total number of judges, and the precise number from Quebec -- we appear to have a little more work to do. But I am confident we will find a solution that is generally acceptable.

We must find a way to give legitimacy to the Court, as constitutional law-maker, in all parts of the country.

OPENING STATEMENT

PATRIATION AND THE AMENDING FORMULA

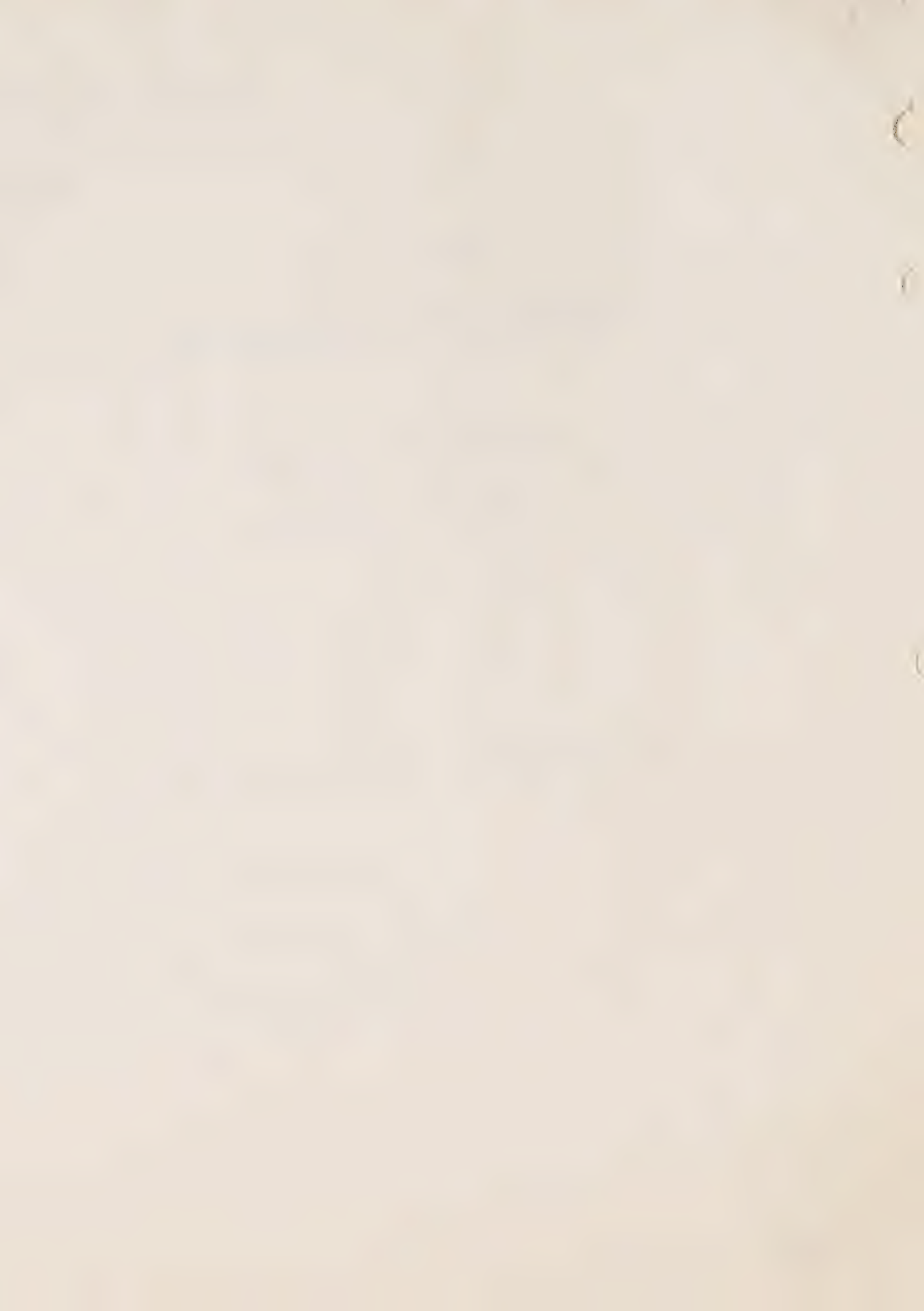
HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION



OTTAWA, SEPTEMBER 8-12, 1980.



OPENING STATEMENT

PATRIATION AND THE AMENDING FORMULA - p. 1

All governments agree with the objective of patriating Canada's constitution. To eliminate the last vestige of colonial status. To terminate the power of the British Parliament to amend the B.N.A. Act. To make Canada's constitution, once and for all, a truly and exclusively Canadian document.

Patriation, in itself, is a symbolic act. No one believes that the British government, these days, would move independently to change the B.N.A. Act. No one believes that the British Parliament would refuse to enact an amendment which Canadians joined together to request. We are subservient in form only, not in substance.

To say that patriation is symbolic is not to say that it is meaningless. I think all of us agree that patriation of the constitution would be an important affirmation of our nationhood.

Patriation, itself, is not the issue.

The issue is how patriation is to be accomplished.

Let's be clear on one point. Patriation means terminating the authority of the British Parliament to amend Canada's constitution. That means we must have some other way to amend the constitution, or, to be more precise, those sections of the constitution which are now amendable only by Westminster. Those are principally the sections which affect both provincial and federal governments, particularly the division of powers.

Attempts to reach agreement on an all-Canadian amending formula stretch back to 1927. On a number of occasions, we have come close. The Fulton-Favreau formula in the mid-60's. The Victoria Charter formula in 1971. The "Toronto consensus" formula in 1979. And now, perhaps, the Alberta proposal.

It should come as no surprise that agreement on an amending formula has not been easy. In a federal system of government, in a country with diverse regional interests, the amending procedure is the most important element of our fundamental law. And we must strike an appropriate balance between flexibility, on the one hand, and stability on the other. Flexibility, so that we can change the constitution to reflect changing circumstances over time. Stability, so that each of the governments has some assurance that its particular interests can not easily be overridden by majority vote.

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PATRIATION AND THE AMENDING FORMULA - p. 2

I am hopeful that governments will be able to reach agreement on an amending formula. While Saskatchewan might have a preference for one or another of the various proposals under consideration, we will, in the interests of compromise, give careful consideration to accepting any formula which has general support.

What we cannot accept is unilateral action, on the part of the federal government, to impose an amending formula or to make other changes in areas affecting provincial rights. We would regard such unilateral action as a serious breach of well-established constitutional conventions. Conventions recognized for many decades. Conventions set out in a federal paper published in 1965, under the authority of the then Minister of Justice, the late Guy Favreau. Conventions accepted, I believe, by all governments.

I need hardly point out how divisive unilateral action could be. I need hardly point out the serious consequences of unilateral federal action if it were opposed by both opposition parties in the House of Commons and resisted by all or many provincial governments.

That is not the way to renew the Canadian federation. Constitutional change must unify, not divide.

I am confident that we can do the job that Canadians expect of us. I am here to talk, to bargain, to compromise. I am here to work out, with other governments, a package of constitutional reforms that will meet the legitimate aspirations of all parts of the country. A package that will include substantive changes in national institutions and the division of powers, as well as an agreed amending formula.

If we are all determined to reach agreement, if we are all prepared to compromise a little, I am confident we can succeed.

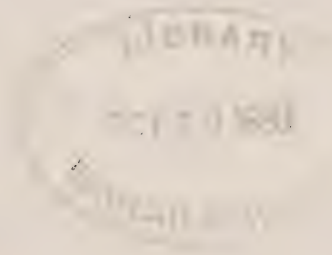
Government
Publication

OPENING STATEMENT
POWERS OVER THE ECONOMY

HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION



OTTAWA, SEPTEMBER 8-12, 1980.

OPENING STATEMENT
POWERS OVER THE ECONOMY - p. 1

At the outset let me make two points.

First: there should be no confusion; all provinces wish to secure and improve the Canadian economic union. That is not the issue.

I was deeply concerned in mid-summer when it was clearly implied that the Government of Saskatchewan had only recently come to accept the need to maintain and improve our economic union.

That has never been the issue.

There is no disagreement in principle. But there has been, and continues to be, disagreement over the method. Mr. Romanow has stated publicly, and I will say again: we are convinced that the federal proposal is simply not the appropriate way to protect the economic union. Our approach, which I will get to in more detail in a moment, is based on a faith in the co-operative spirit of Canadian governments rather than the negative instrument of constitutional prohibitions.

My second point is this:

We have said, and firmly believe, that the substance of the Powers over the Economy proposal has been brought to the constitution table, very late in the day. Detailed proposals and working papers have been available for barely two months.

This, Mr. Chairman, is extremely short notice for a very complex and important issue. Even further complexity was added by the late lamented linkage with resources.

Let me turn now to the federal proposal, to our concerns with that approach, and to the positive alternative suggested by Saskatchewan.

The federal government would have us "enshrine" in the constitution the basic operational rules of our economic union. In essence, the constitution would spell out in some detail a prohibition against causes and practises that discriminate against people, goods, services or capital coming from, or going to, another part of Canada.

We remain opposed for a number of reasons.

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First, it would place unacceptable limitations on the capacity of a province to fulfil its responsibility to manage the provincial economy. While remaining committed to the maintenance and improvement of the Canadian economic union, provincial governments must also accept their responsibility for providing economic opportunity to Canadians residing in their provinces.

Shouldn't Saskatchewan be able to invest all of the Heritage Fund money in the development of our province?

Shouldn't Saskatchewan be able to retain our limited supplies of natural gas for use in the province and, perhaps, at below market prices?

Second, the federal approach would leave to the courts the enforcement of the prohibitions.

No words, however carefully chosen, will avoid uncertainty in what is prohibited. All governments will become adept at finding new ways to get around what seems to be prohibited.

This will leave in the hands of the courts numerous social and economic decisions that are of real importance to all of us.

This is unacceptable.

We cannot delegate to the courts the difficult economic decisions and policy trade-offs that should properly be made by responsible governments.

Finally, the federal approach does not and cannot get at the economic decisions by governments that have the greatest impact on the operation of the Canadian economic union. An unusually low tax rate or high subsidies will do more to alter the relative positions of the provinces than all of the so-called discriminatory laws and practices under attack by the federal proposal.

Saskatchewan has proposed that we entrench in the constitution a clear commitment on the part of all governments to maintain and improve the Canadian economic union.

Saskatchewan's proposal avoids the use of constitutional prohibitions and subsequent judicial policy making. Rather, it depends on a commitment by all governments to enter into an

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on-going review and a co-operative approach to the resolution of problems. And, our approach brings under review a wider range of problems. We would extend the commitment and review to all government laws and practices which affect the economic union.

We have faith in the good will, good judgement, co-operative spirit, and enlightened self interest of all Canadian governments and of the people they represent and serve. This is not the time for responsible political leaders to delegate to the courts decisions which should be determined by conciliation and compromise. Decisions which inevitably will require economic judgement and policy trade-offs should not be made by the courts. They should be made by responsible governments, which are accountable to the voters, through the time-honoured institution of co-operative federalism.

Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Powers over the Economy
The Saskatchewan Position

Ottawa
September 8-12, 1980

POWERS OVER THE ECONOMY:

SECURING THE CANADIAN ECONOMIC
UNION IN THE CONSTITUTION

THE SASKATCHEWAN POSITION

1. INTRODUCTION

The Government of Saskatchewan's objectives with this document are:

- to review briefly the "economic union" problem and solution as suggested by the Federal Government;
- to outline our general concerns with the approach being suggested by the Federal Government; and,
- to suggest another more positive route which would be founded on a real belief in co-operative federalism rather than placing many aspects of our economic future in the hands of either an "umpire" --- the courts --- or the federal government.

2. THE FEDERAL VIEW

Essentially, the Federal Government is suggesting that we must introduce constitutional safeguards for the economic union by barring "undue impediments" to the free interprovincial movement of persons, goods, services and capital.

Such an approach, it is argued, will not only assure basic equality to all citizens, but will result in greater economic efficiency and, therefore, the country as a whole will be richer, more able to assist disadvantaged people and regions, and more able to compete in the international market place.

The federal proposition is not, however, a naive free-trade thesis insensitive to the realities of Canadian federalism and social objectives, as seen through their eyes.

Indeed, the realities are stated rather well on page 30 of the discussion paper* prepared by the Government of Canada as follows:

"...provisions to secure the Canadian economic union will have to allow governments to pursue

* The Honourable Jean Chretien, Securing the Canadian Economic Union in the Constitution, Government of Canada, 1980.

other social and economic goals, such as redistribution of income and wealth among citizens and the fostering of economic development in lagging areas of the country."

and continuing in the next paragraph:

"...provincial legislation and regulations must be capable of variation from province to province, and such variation will inevitably cause some impediments to economic mobility; but these must be kept within the bounds of necessity."

While recognizing that difficult economic trade-offs are involved and that the federal system must be maintained, the federal proposal then asserts that there must be significant safeguards secured constitutionally to prohibit discriminatory actions against persons, goods, services, and capital on a provincial basis. As well, federal regulatory powers would be enlarged so as to deal with other unwarranted obstacles to economic mobility within Canada. Only as a third approach does the federal government suggest co-operative arrangements among governments.

This federal view has led to the presentation of suggested wording for Section 8 of a proposed Charter of Rights and for new sections 121, 91(2) and (2.1) of the B.N.A. Act.

3. CONCERNS WITH THE FEDERAL VIEW

There is little need to debate many of the facts presented by the federal discussion paper. There is no doubt that barriers to mobility of factors of production and goods do exist in Canada and that all orders of government --- as well as many other institutions --- contribute to this situation. It is also likely that our economic efficiency would be improved with the removal of some of the barriers, although this is by no means necessarily true of all of them.

But, and this point is made clearly by the federal government, the bulk of the impediments are purposefully created by both orders of government in the pursuit of other social and economic objectives that are seen by political leaders to have a higher priority. They are, quite simply, considered acts by responsible governments --- the essence of our democratic system.

The flaws in the federal view, as we see them, are less in the presentation of facts, than in the sense of crisis adopted, in the lack of faith in the Canadian political system, and in the suggestion that political leaders should relinquish to the outcome of judicial decisions their responsibilities for maintaining the economic union.

Perhaps a more detailed review of various concerns would be the best approach at this point:

a) A Crisis? Apparently Not.

The need for constitutional safeguards against barriers to mobility has been expressed in language --- "a priority"; "a sense of urgency"; "critical" "compelling reasons" --- suggesting a crisis is developing.

While the Government has expressed their concern in this respect over several years, the details of the proposed changes have come to us very late in the current round of constitutional discussions. As well, there has not been, to our knowledge, an agenda item for Finance or First Ministers entitled "barriers to mobility" or "the economic union".

Inconsistently, the federal government has also stated that while there are some present problems its real anxieties relate to potential provincial discriminatory actions. On Page 25 of their discussion paper, they note that while "enlightened self interest has largely prevailed so far, one must consider whether this legal void should be allowed to persist".

b) Extent of Effort to Improve Mobility

We have not been able to establish the extent to which the changes to the B.N.A. Act, being proposed by the Government of Canada would invalidate provincial laws and regulations.

On the one hand, we are assured that "the new provisions would not prevent affirmative action programs, regional development policies, industrial incentives, income redistribution, etc.".

Conversely, however, the federal discussion paper on pages 22 to 24 reviews numerous provincial government initiatives that in their view segment the Canadian market and create unnecessary obstacles, including, for example:

- subsidies and tax incentives to producers;
- public procurement;
- provincial monopolies;
- consumer and environmental protection, product standards, and technical regulations;
- labour standards.

While federal officials have sincerely offered their interpretation of which laws would be invalidated, there are numerous circumstances in which the results of judicial review are uncertain.

If indeed the objective of the federal proposal is to improve mobility within Canada, then one must consider the total impact of numerous institutions and practices in Canada and not simply the explicit barriers.

Surely the levels of corporate, personal and other taxes in any province have a far greater impact on the mobility of resources than some of the barriers such as purchasing policy that are apparently under attack.

Surely the national tariff and transportation policies have an immeasurably greater impact on relative prices, rates of return and ultimately the location choice for capital and labour.

We see the federal aim being taken at the explicit barriers that obviously impede movements among the provinces. The "big" economic levers such as tax rates, tariff and transportation policies, would not be brought into question. But, these major economic levers are precisely the forces having the greatest impact on the mobility of resources and products in Canada. And, the richest provinces have the greatest capacity to use such instruments to attract business away from other provinces. The only defence available to a small province may be to take action which

creates barriers to protect their competitive position within the economic union --- and the federal objective is to ensure that the constitution would not permit the explicit barriers while leaving untouched the more powerful economic levers.

The only obvious safeguard is to maintain a continuing sense of co-operation in Canada. Providing "safeguards" against some explicit barriers only changes the rules of the game --- in favour of some -- but it does little to safeguard the economic union.

c) The Role of the Judiciary

Under the federal proposal, much of the responsibility for managing aspects of the economy would be relinquished to the interpretation of the constitution as developed in the courts.

In short, the judgement on whether any law or practice discriminates in a manner that contravenes the principles in the constitution would be taken in the courts.

But the difficult task of trading off among economic and social objectives is a matter demanding economic and political judgement (often involving policies of two responsible governments), and this is an area with which the courts are ill-equipped to deal.

It is our view that it would be irresponsible of Canadian governments to relinquish the responsibility for these difficult, various and changing economic decisions.

Responsible governments working co-operatively must accept the problems related to the economic union. It is unacceptable for these problems to be turned over to the judiciary.

d) Provincial Development

The implication that the federal government is almost exclusively responsible for regional development is unacceptable. The proposals made by the Government of Canada would enable only Parliament and not the legislatures to introduce laws and practices based on regional development objectives, except where the matter involves entirely intra-provincial objectives.

Provincial governments must accept the responsibility for providing economic opportunity to Canadians residing in the province. This will involve policies pertaining to the entire province as well as to groups within the province.

Some provincial development policies are explicitly discriminatory, e.g., purchasing policies or labour residency requirements. Others such as low tax rates, subsidies, venture capital schemes and the like are less blatant but no less oriented to improving the relative position of the province within the Canadian economic union.

Provincial responsibilities will not have changed but the instruments of economic policy available to provinces will have been significantly reduced. Greater use of available approaches, such as tax incentives, less likely to be overturned for constitutional reasons, will be made. Perhaps the only certain result is that the federal and provincial governments would develop squads of highly paid bureaucrats adept at "getting around the courts".

It is by no means certain that federal policies related to regional development are particularly effective. Provincial initiatives to take full advantage of growth opportunities can be effective complements to the policy of "helping the lagging regions". Provinces are at least as likely as the federal government to be active in such developments and excluding them from such regional development activities may well be detrimental to the economic union.

Imperfections in our economic union ought to be dealt with by responsible governments in the conference room, not by lawyers and judges in the court room.

4. ANOTHER OPTION

In its discussion paper, on page 29, the Government of Canada noted the following:

"Prescriptions which would be too detailed would run the risk of being circumvented, or of preventing governments from adapting their laws and regulations to changing circumstances...".

It is our view that the federal prescriptions have gone far beyond the level of detail and specificity that is acceptable.

But, we do not deny the importance of avoiding unnecessary impediments to mobility that reduce our economic efficiency.

Nor do we deny the need to implement "safety" systems that focus on squeezing such unnecessary barriers out of the system.

The Canadian Constitution should not contain the rules that govern the extremely complicating trade-offs between oft-times conflicting economic objectives of responsible governments.

Doing so would require political leaders to relinquish much of their authority to the courts since it is impossible that any wording can provide sufficiently clear direction to the courts --- and this would be an entirely unacceptable change in our concept of responsible government.

The Government of Saskatchewan would prefer to see more faith in the co-operative spirit of responsible governments working towards a mutually acceptable economic union given the problems of the day.

Certainly there will be conflicts and trade-offs. Certainly barriers to mobility will exist that are not seen to be useful by all jurisdictions.

But responsible governments working with the on-going objective of improving the economic union can and should make these trade-offs and resolve the conflicts. The ultimate shape of our economic union should not be left to judicial interpretation.

We would see as preferable an option that places in the constitution a statement of commitment by the federal government and the provincial governments to the effective operation of the economic union. Such an approach could be similar to the one being considered for equalization.

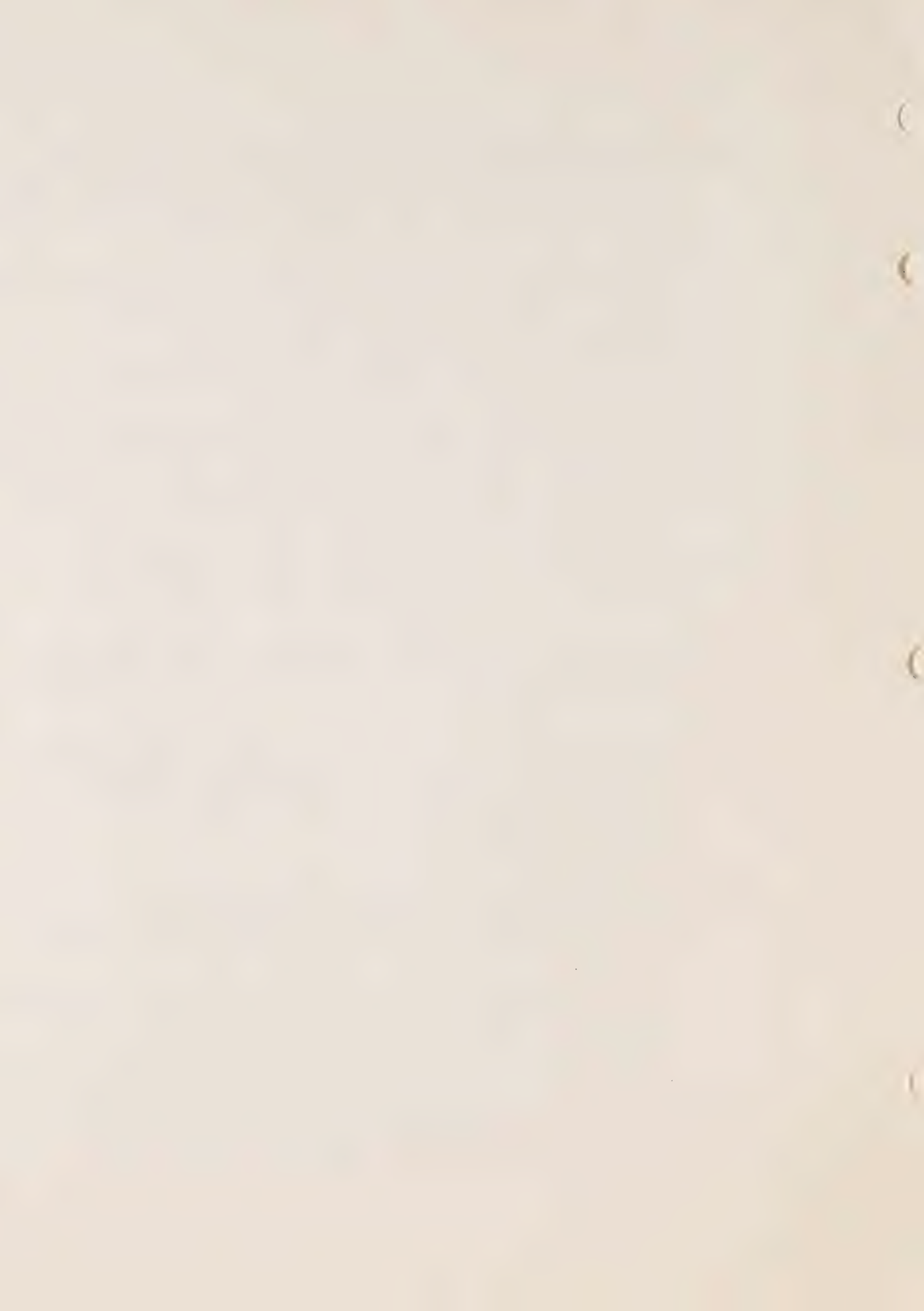
This commitment could include a reference to an on-going review by federal and provincial Ministers to ensure that government policies are harmonized to enhance our economic union. Such an approach could deal not only with the explicit barriers to mobility, on which the federal approach concentrates, but also with governmental spending, taxation and structural policies that serve to influence to a far greater extent the mobility of resources in our federation.

How, you might ask, will such a co-operative approach resolve real differences of opinion among governments?

The question, of course, includes the answer. Only by working co-operatively towards harmonized programs and policies can governments minimize unnecessary barriers to mobility while still achieving various, and sometimes conflicting, social and economic objectives.

The federal approach would delegate much of the authority to the courts and would lead to an attitude of "how can we get around the law" rather than facing up to the need to co-operate.

The assumption in the federal approach seems to be that provinces are (or more correctly, will in the future become) extremely naive and fail to recognize the costs related to a destructive competition among provinces for development. It is admitted in the federal discussion paper "that enlightened self-interest has largely prevailed so far". We see no reason why "enlightened self-interest" will not prevail in the future.



In brief, we as governments must commit ourselves to the concept of continually reviewing our economic union. We must, however, have faith in the co-operative spirit of present and future governments. Responsible governments cannot relinquish to the courts their job of managing the economic union.

CANADIAN ECONOMIC UNION

SASKATCHEWAN DISCUSSION DRAFT

Without altering the legislative or other authority of Parliament or the legislatures or of the Government of Canada or the governments of the Provinces or the rights of any of them with respect to the exercise of their respective legislative or other authority:

- (a) Parliament and the legislatures, together with the Government of Canada and the governments of the Provinces, are committed to
 - (i) the maintenance and enhancement of the Canadian economic union,
 - (ii) the movement throughout Canada of persons, goods, services and capital without discrimination by Canada or any Province, by law or practice, in a manner that unjustifiably impedes the operation of the Canadian economic union, and
 - (iii) the harmonization of federal and provincial laws, policies, and practices that affect the Canadian economic union; and
- (b) pursuant to the commitments specified in clause (a), the Government of Canada and the governments of the Provinces are committed to the ongoing, systematic and co-operative review by them of the operation of the Canadian economic union.

POWERS OVER THE ECONOMY:

AN ANALYSIS OF FEDERAL PROPOSALS

GOVERNMENT OF SASKATCHEWAN

FIRST MINISTER'S CONFERENCE ON THE CONSTITUTION

OTTAWA, SEPTEMBER 8 - 12, 1980

POWERS OVER THE ECONOMY: AN ANALYSIS OF FEDERAL PROPOSALS

The federal proposals for securing the Canadian economic union in the constitution, contained in section 16 of the draft Charter of Rights and the amendments to section 121 and section 91 of the British North America Act, are an attempt to prevent the imposition of unnecessary legislative and administrative restrictions on the movement of people, goods, services and capital across provincial boundaries.

While subscribing to the principle of the Canadian economic union, Saskatchewan disagrees with the approach that the federal government has taken in its proposals.

In general terms, our objections to the federal proposals may be grouped under four categories.

First, economic integration is not an end in itself; one has to consider the final results of such a policy, and the results will not always be positive. Mobility of economic and human resources, for example, may benefit the wealthier regions at the expense of the rest of the country, thereby contributing to regional disparity and disunity. In fact, the creation of some economic barriers may be necessary if a more equal distribution of wealth in Canada is to be achieved.

Second, we believe that economic goals cannot be considered in isolation from social and cultural goals. The proposed changes place restrictions on the provinces which will prevent them from implementing legitimate policies in these other areas.

Third, enshrining in the constitution specific prohibitions against barriers to movement would burden the judiciary with the task of enforcement. The courts would be called upon to evaluate economic policy, a political matter which in our system of responsible government has quite properly been outside the role of the judiciary. Judges, isolated from the governmental and economic life of the nation, are ill-equipped to make such decisions. Furthermore, calling on judges to evaluate the merits of political decisions poses a threat to their traditional independence and might tend to undermine the moral prestige and authority of the courts.

Fourth, economic union is to be achieved by an expansion of federal jurisdiction at the expense of the provinces. The assumption underlying the necessity for this proposed shift of jurisdiction is that the economic welfare of the country can best be promoted by the federal government. History justifies some scepticism in this regard. The failure of the federal government in the past to deal adequately with regional disparity has not been due to insufficient legislative authority. Underlying the federal proposals for increased centralization of economic power is a basic mistrust of the provinces and the belief that they will ignore the national interest while pursuing their own regional economic goals. This has not been the case in the past and there is no reason to believe it will be so in the future. The provinces are wise enough to realize that their own economic prosperity is dependent on the economic health of

the nation as a whole. But at the same time the economic health of the whole depends on the strength of the regions. We are opposed to any changes which will restrict the powers of the provinces to deal with internal economic matters in an adequate manner. Canada is not a homogeneous country economically, socially, or culturally. Regional problems demand regional solutions. It is very difficult for the federal government, dealing as it must with national concerns, to meet the particular needs of each of the regions.

THE FEDERAL PROPOSAL

We now turn to an examination of the specific proposals made by the federal government.

1. Section 16 of the Charter of Rights: Mobility Rights

We believe it is undesirable to entrench rigid guarantees in the constitution of the right to take up residence, acquire property and pursue a livelihood in any province since the constitutional recognition of these rights will empower the courts to strike down any federal or provincial law which, regardless of its purposes, is judged to limit this right.

Section 16, as proposed by the federal government would permit all laws of general application so long as they do not discriminate on the basis of residence or former residence. Legislative schemes designed to provide

social support to individuals often demand that the recipient of the benefit be resident in the province for some period. Without this requirement, provincial taxpayers would be asked to support persons who have established no connection with the province. However, these reasonable rules affect the opportunity of persons to take up residence and might be seen by the courts to violate section 16.*

Likewise, any provincial attempt to give provincial priority - in jobs, say, or capital investment - would likely be outlawed.

Indeed, in the proposed section 16, the federal government does recognize the need for mobility rights to be subject to restrictions in the interests of regional and provincial economic development. But it is only Parliament and not the provincial legislatures, that would have the power to derogate from mobility rights. Thus provinces run the risk of having legitimate social and economic policy struck down by the courts, and are placed in a weaker position than the federal government.

- We object to the creation in section 16(2)(b) of a right to acquire and hold property in any provinces. That provision would, for example, outlaw Saskatchewan's restrictions on the ownership of farm land by non-residents. Ownership of farm land is not a purely economic matter; it is interwoven with social and cultural values which are

*On the final day of negotiations at the ministerial level, the federal government, as it has done in response to many other concerns which have been raised by provinces, added a new subsection which would answer this problem. As a result of these attempts to avoid the problems of s. 121 the provision now reads like a tax code.

basic to the way of life in Saskatchewan, and which we believe must be preserved.

In connection with the second part of section 16(2)(b), the right to "pursue the gaining of a livelihood in any province", we are anxious to know what effect this provision would have on provincial laws relating to labour practices and professional regulation. Legitimate policies designed to enforce standards, protect consumers and encourage provincial development should not be subject to constant court challenge.

2. Section 121 of the British North America Act

Section 121(1) and (2) would secure the Canadian economic union by prohibiting federal and provincial laws or practice which discriminates against persons, goods, services or capital on the basis of the province of origin or of destination. As with the words "of general application" employed in section 16(3)(a) of the Charter of Rights, we are concerned about the uncertainty of the term "discriminate". Does the mere fact that a law or practice employs a classification based on provincial boundaries render it discriminatory, or does it have to be discriminatory in effect? Worse still, the failure to qualify the term "discriminate" in any way means that the courts would be obliged to strike down any legislation which discriminates, no matter how economically insignificant the effect of the legislative preference. The section therefore goes

far beyond its stated objective of preserving the Canadian economic union and places an undesirable and totally unnecessary restriction on legislative and executive powers.

The possible scope of section 121 raises a number of questions in regard to its impact on specific provincial policies.

In relation to "goods", would a provincial government advertising program designed to encourage people to buy goods produced in the province violate section 121? Could a provincial power company sell natural gas outside the province at a higher price than that charged to its resident customers? Could it give preference to provincial consumers in the case of a shortage?

With respect to "services", do provincial restrictions on the activities of professional people from outside the province contravene the section? Would provincial labour legislation authorizing union halls to give preference to resident union members over non-residents be placed in jeopardy?

Under "capital" our concerns centre on the effect this provision might have on the use of public monies. Could Saskatchewan, for instance, lend "heritage fund" monies to resident borrowers at a preferential rate? Could a provincial development agency make high-risk venture capital loans available only to provincial

enterprises? Would section 121 be violated by a provision requiring a certain percentage of public service superannuation funds to be invested within the province?

Would it be permissible for a province, pursuant to a policy of public ownership of a portion of a provincial industrial sector, to expropriate only that part of the industry that was owned by non-residents?

These examples illustrate some of our concerns about the possible effects of section 121. The wording of the section invites a broad interpretation which we believe would seriously interfere with provincial capacity to meet legitimate goals for economic development.

The derogation clause contained in section 121(3) again invites judges into the political arena to determine what is in "the interests of public safety, order, health or morals". We do not think that it is appropriate for the courts to decide when conditions compelling derogation are satisfied. We note that the federal government also takes this position and has given Parliament a political override.

Section 121(4)(b) grants Parliament the power to avoid section 121 entirely by declaring an enactment to be of "overriding national interest". It is the electorate, not the courts, which would determine whether or not Parliament has acted reasonably. Our objection to section 121(4)(b) is that no such overriding declaratory power is

granted to the provinces. The probable result of this imbalance would be an expansion of federal jurisdiction. Parliament alone would have the capacity to respond to needs for government intervention in economic development in ways that are proscribed by section 121. When needs arise in areas that, but for section 121, would fall within provincial jurisdiction, the courts would likely be reluctant to find that neither level of government is competent to act and would probably allow Parliament to fill the void in the name of the "national interest". The result would be an expansion of federal jurisdiction at the expense of the provinces.

Section 121(5) provides that when a provincial legislature passes a law which is designed to reduce economic disparities between regions which are within the province, such laws will not be considered to violate section 121(1) so long as there is no greater discrimination against persons, goods, services and capital from outside the province than there is against those from within the province, but not within the preferred region. Although the motive behind the subsection is the proper recognition of the provincial role in managing economic development within the province, this exception reveals the underlying fault in the federal attempt to control, through a constitutional prohibition, what provinces may do in this area.

The exception in section 121(5), when read with the rest of section 121, reveals the federal thinking that economic preferences which are expressed in terms of the entire province are destructive to the Canadian economic union and must be prohibited, while economic preferences expressed in terms of regions within a province are not a problem. In truth, neither proposition is correct. Some provincial policies of regional economic development could have a very serious discriminatory effect. When a province chooses to prefer one of its regions in, for example, purchasing materials for government construction, it not only excludes the rest of the province, it excludes the rest of Canada. Nobody could deny that an Ontario policy to make purchases wherever possible from the industrial complex of south central Ontario could have a serious impact on other provinces' industrial well-being.

At the same time, many economic policies which use provincial boundaries, such as restricting government art purchases to works by artists within the province, or preferring architects from the province in choosing designs for public buildings, would have only a trivial effect on the Canadian economic union. Yet, these policies are the types of discrimination which are caught by section 121(1).

Nothing demonstrates better the validity of Saskatchewan's preference for a political review of all laws and practices which impede the Canadian economic union

than the anomolous results which flow from the application of the standards in sections 121(1) and 121(5).

Section 121(6) extends the absolute prohibition of tariffs and customs barriers between provinces contained in the original section 121 to services and capital. The old section has been interpreted as prohibiting direct charges in the form of tariffs and customs duties only and has not prevented the imposition of other quantitative restraints or absolute barriers to entry, as, for instance, arise when provincial monopolies are created. We are concerned that the inclusion of services and capital opens the door to a broader interpretation of the subsection, since tariff-like restraints on the interprovincial movement of services and capital are highly unlikely. To give the subsection operational significance, the courts are likely to construe the phrase "impedes the admission free" as including any substantial impediments imposed either directly or indirectly. Such a construction would go far beyond the interpretation given to the original section 121 and would create a serious restraint on both federal and provincial capacity to regulate the economy.

3. Section 91 of the British North America Act

The proposed section 91(2.1) grant of jurisdiction over competition to Parliament contains the potential for a significant expansion of federal jurisdiction. The grant is completely unqualified and therefore would permit

the federal government to regulate purely local industries in the interests of competition. Such a power would pose a serious threat to provincial regulation of professions and to provincial monopolies. The concurrent jurisdiction left with the provinces by the proposed section 91(3) would preserve provincial legislation in this area, but only for as long as Parliament chose not to enact conflicting laws. The provinces would thus be placed in an uncertain and subordinate position, a situation which is unacceptable.

On its face, the section 91(2.2) grant of power to the federal government over products standard throughout Canada to Parliament is acceptable. Section 91(3) preserves provincial jurisdiction to regulate local product standards so long as provincial laws do not conflict with federal legislation.

It is likely that the proposed section 91(2), which expressly includes goods, services and capital in the federal trade and commerce power, would lead to an expansion of federal jurisdiction. If the new subsection is not intended to affect the distribution of powers, there is no reason to include it. An addition of this sort implies an intention to change the existing distribution of powers and is likely to be interpreted as such by the courts.

CONCLUSION

The federal proposals would result in a significant shift of jurisdiction from the provinces to the federal government and would seriously impair provincial capacity to deal with local economic, social and cultural matters. The proposals also place undue responsibility for economic regulation on the courts, an approach which we regard as undesirable in terms of both the accountability and the qualifications of the judiciary.

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REVISED FEDERAL DRAFT ON MOBILITY RIGHTS

16. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Everyone in Canada has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and pursue the gaining of a livelihood in, any province.

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence, and

(b) any other laws referred to in subsections (4) or (5) of section 121 of the British North America Act.

REVISED FEDERAL DRAFT

121(1) Canada is constituted an economic union within which all persons may move without discrimination based on province or territory of residence or former residence and within which all goods, services and capital may move without discrimination based on province or territory of origin or entry into Canada or of destination or export from Canada.

(2) Neither Canada nor a province shall by law or practice discriminate in a manner that contravenes the principle expressed in subsection (1).

(3) Subsection (2) does not render invalid a law of Parliament or a legislature enacted in the interests of public safety, order, health or morals.

(4) Subsection (2) does not render invalid a law of Parliament enacted

(a) in accordance with the principles of equalization and regional development recognized in section ---; or

(b) in relation to a matter that is declared by Parliament in the enactment to be of an overriding national interest.

(5) Subsection (2) does not render invalid a law of a legislature enacted in relation to the reduction of substantial economic disparities between regions wholly within a province that does not discriminate to a greater degree against persons resident or formerly resident outside the province or against goods, services or capital from outside the province than it does against persons resident or goods, services or capital from a region within the province.

(6) Nothing in subsection (3), (4), or (5) renders valid a law of Parliament or a legislature that impedes the admission free into any province of goods, services or capital originating in or imported into any other province or territory.

(7) Nothing in this section confers any legislative authority on Parliament or a legislature.

SUGGESTED FEDERAL DRAFT

1. Add to section 91 the following heads of jurisdiction immediately following head 91.2:

2.1 Competition

2.2. The establishment of
product standards
throughout Canada

2. Add to section 91 the following new subsections:

(2) For greater certainty,
"regulation of trade
and commerce" in sub-
section (1) includes the
regulation of trade and
commerce in goods,
services and capital.

(3) The authority conferred on
Parliament by heads 91
(2.1) and 91 (2.2) does
not render invalid a law
enacted by a legislature
that is not in conflict
with a law of Parliament
enacted under either of
those heads.

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FEDERAL-PROVINCIAL CONFERENCE
OF FIRST MINISTERS
ON THE CONSTITUTION

Opening Remarks by Premier Peter Lougheed

September 8, 1980

OPENING REMARKS BY PREMIER PETER LOUGHEED -
FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION -
SEPTEMBER 8, 1980

Mr. Prime Minister and Fellow Premiers -

As you know, Albertans this year are celebrating their 75th Anniversary as a partner within Confederation. We are proud of the contributions we have made to Canada and the development which has taken place thus far in our province's history. We are here as a participant in this Conference to reaffirm our commitment to Canada and to develop a new federalism for the future. Our nation has grown dramatically since 1867; it now includes ten provinces rather than four. Thus, the new federalism which we will forge must recognize and respect the goals and interests of all parts of this vast and diverse nation.

Because we are celebrating our anniversary as a province we have had an opportunity to reflect upon the existing Constitution. What are Canada's constitutional problems? Is it that our existing Constitution is antiquated - that its words are no longer relevant or meaningful to meet the challenges of the future? To Albertans the answer is that the existing Constitution can serve as a framework for our future development. As we contemplate the issues of constitutional change, it seems to many of us that our existing Constitution on the whole has served us well. The problem seems to have arisen both from the interpretation of and the attitudes towards the Confederation arrangement displayed by the central government. From our perspective it seems to us the central government has consistently interpreted the arrangement in their favour and relied more extensively upon their overriding powers than is appropriate

in a true federal system. Thus it is the need for a change of attitude rather than the need for formal constitutional amendments that in our view is the key issue which must be addressed if we are to overcome the dissatisfaction with the operation of the federal system.

It seems to me that the Fathers of Confederation were wise in fashioning a federal system as opposed to a unitary state. They recognized that some responsibilities of government should be under the exclusive jurisdiction of provinces. In other areas they gave responsibilities to the central government. In considering any revisions to our Confederation compact, and we do view it as a compact, most Albertans place great importance upon strengthening the relative position of their provincial government to offset the strong position of the central government. Albertans believe that the level of government which is closer to the people - the provincial government - should be strengthened.

When the Western Premiers met in Lethbridge this past April we issued a communique proposing a new federalism for Canada. We contemplated a new federalism that would have as its principal objective reducing the alienation and frustration in the West. I do not want to go into detail on our concerns - they are well known. In general we believe that the principal beneficiaries of Confederation have been at the center rather than in outer-lying regions of the country. To us "new federalism" means a new Confederation arrangement where the aspirations of all parts of Canada would be recognized. The sense of dissatisfaction in the West - and what we perceive to be similar concerns in Quebec and in Atlantic Canada - stems from the belief that their legitimate aspirations are being frustrated by the current operation of the federal system.

The objective of constitutional reform, the Western Premiers stated, "must be to ensure that all provinces have the opportunity to build upon their strengths and thus to share in and contribute to a united and prosperous Canada". To the Western Provinces this would include developing their resources in order to have a more stable economy. In addition to giving provinces exclusive jurisdiction over certain matters, the Fathers of Confederation gave ownership of natural resources to the provinces. I should add that Alberta is celebrating another anniversary this year - the 50th anniversary of the transfer of ownership of natural resources to the province. To Albertans the ownership rights of resources and the accompanying legislative jurisdiction to develop these resources is a cornerstone of the Confederation agreement. To us development of resources is very much a people issue because it means jobs and economic growth and stability for Canada. ✓

Decisions we make this week with respect to resources will have a profound impact on all provinces, not just Alberta. Natural resources are an important means by which the provinces can provide their citizens with the economic opportunities and well-being which all Canadians have come to expect. We seek a constitutional reaffirmation of the traditional ability of the provinces to establish policies which will ensure the proper development and use of the resources which they own. This principle was accepted in the Constitution in 1867 and we should ensure that it is carried forward in a revised Constitution.

A further important question is how we will accommodate the cultural, social and economic diversity that is inherent in this great nation of ours. One of Alberta's greatest strengths is its cultural mosaic where people from many

ethnic origins have preserved their cultural heritage. We must remember in our discussions that the multifaceted nature of Canada is something to be treasured. We must build a Canada in which each individual, each group, each province or region can achieve its potential. Only in this fashion can we reduce the stresses and strains within our country and achieve our goal of harmony. To attempt to force either individuals or provinces into a common mold - in economic, social or cultural terms - clearly would be a grave error and a failure to recognize the realities of this country.

Only if there is mutual understanding and goodwill can significant progress be made at this Conference in agreeing upon constitutional changes that will benefit not only one part of Canada but all parts. When we, as First Ministers, met on June 9 to resume the process of constitutional review, we recognized our shared responsibility as partners in Confederation to forge a new and stronger unity in Canada as it enters the decade of the eighties. For its part, the Alberta Government is approaching this meeting in a spirit of co-operation and determination to develop a new federation for Canada which reflects the realities of this nation. Our challenge this week and, I assume, in the months to come is to ensure that any changes in the Constitution accurately reflect the realities of Canada and significantly improve the operation of our federal system of government.

In conclusion, I would like to end on two cautionary notes. First, the process of constitutional change is not one to be taken lightly, for the final outcome will determine the evolutionary path of our federation for decades to come. If we are constrained in our negotiations by imposed deadlines, the process

itself must be questioned. Second, one must remember what a Constitution is. It is more than words. No matter how carefully it is drafted or what the words say, in the final analysis it takes people to make the Constitution work. Constitutional crises do not just happen; they are precipitated and can be avoided if those responsible for decisions choose to do so. If we can remember this reality then whatever is accomplished over the next few days will have been worth the effort.

NOTES FOR AN OPENING STATEMENT

HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION



OTTAWA, SEPTEMBER 8-12, 1980.

INTRODUCTION

Mr. Prime Minister, fellow Premiers:

Events have combined to create a juncture in our history which demands much of all of us.

Collectively, we around this table represent all of Canada. I believe we must approach our task - whatever our individual constituencies - with a collective sense of responsibility to all Canadians, wherever they live.

I believe we also need to salt our responsibilities with a measure of humility. Several hundred years of history have shaped the Canada of today. The process of determining the shape of Canada tomorrow will not be completed with any finality in these five days.

We can make a solid beginning. But I accept no deadlines.

When I emphasize our collective responsibility to all Canadians, let me not be misunderstood. I do not imply that we are called on to abandon our respective constituents. On the contrary. One of the essential aspects of our country is that Canada is a federal, not a unitary, state. We are addressing the basic law of a country which has eleven governments, not one. And in the future there may be other provinces. Therefore, the aspirations of the Canadians who live in Nova Scotia, Ontario, Alberta, the Yukon and the other parts of Canada - in all their diversity - are not only a legitimate part, but an essential part, of a renewed federalism.

We in Saskatchewan are anxious to renew Canadian federalism - to equip Canadians with the democratic tools to achieve their aspirations, nationally and regionally.

We are anxious to patriate our constitution - to place exclusively in Canadian hands the determination of Canada's destiny. But we insist that this be done in the time-honoured way: by consensus among the governments which represent all the Canadian people in all their dimensions.

The convention of consensus in changing those elements of our constitution which affect both the provinces and the federal government is a fundamental part of the Confederation we know

today. We do not take it lightly. Some may get impatient. But impatience will not bring us closer together.

We have, indeed, come closer together in recent years on a broader range of constitutional issues than that attempted in the Victoria Charter in 1971.

The discussion has involved not only the First Ministers and the Continuing Committee of Ministers on the Constitution, it has also involved individual governments, parliament, some legislatures, special task force studies and studies by non-government groups. Even a partial list is impressive:

- The Special Joint Committee of the Senate and the House of Commons (the Lamontagne-MacGuigan report);
- the Task Force on Canadian Unity (Pepin-Robarts);
- the Ontario Advisory Committee on Confederation;
- the Canadian Bar Association Study;
- the Conservatives' "Kingston Communique";
- the Quebec Liberals' "Beige Paper";
- discussion papers by such organizations as the Canada West Foundation.

In the process, we have made considerable progress on a number of the long-standing issues confronting our federal state: the Supreme Court, second chamber, equalization, family law, and (at one stage) resources. We have made much less progress on those issues inserted at the eleventh hour.

In my view, it is vitally important that we set our sights this week on constructing a package of constitutional reforms to which we can all subscribe - as a package. If any of us believes that we can dispose of our agenda, item by item - without balancing the parts against the whole - we are not likely to succeed.

None of us can know all that is important, to all Canadians. What seems vital to one of us, may appear trivial to another, what seems an immense problem to one part of our country, may not touch another. The package must be a package of our collective goals, of our collective wisdom.

For Saskatchewan, I pledge to work hard to achieve such a package. To bend, to compromise, in an effort to achieve that balance which will help preserve the essence of Canada - grounded in our linguistic duality, our unique regions and our cultural diversity; secure in our division of powers; and united as Canadians from sea to sea.

Let me now comment very briefly on two or three of the issues before us.

RESOURCES

We in Saskatchewan are this year celebrating our 75th anniversary as a province. There is a great deal of pride among Saskatchewan people in our short history and in our accomplishment as a community. But there is also a very strong determination about shaping our future.

Those 75 years have been largely years of struggle. Struggle to survive a harsh climate, drought and depression. Struggle to find a job when the crop dried up. Struggle to find money to send sons and daughters to school. Struggle to create opportunities for them after they graduated. Struggle to build hospitals and other essential community services when community financial resources fluctuated wildly from year to year.

One of the astounding manifestations of this history is the homecoming celebrations in Saskatchewan towns and villages this year. The tiny village of Stewart Valley, with a current population of 126, played host at one homecoming event, to over 1500 people, most of whom had direct family ties with that community. This is not unusual. It has been repeated in hundreds of other communities across the province.

It is both heart-warming and heart-rending to see the return of hundreds of thousands of people, born in Saskatchewan, who were forced to seek opportunities elsewhere because there were no jobs for them at home.

In 1936, Saskatchewan's population was just under a million. It is still just under a million.

Out of this history has been forged a strong resolve on the part of Saskatchewan people - a firm determination to diversify our economic base, to stabilize our boom-and-bust economy.

I believe the most pervasive aspiration among Saskatchewan people is to cease to be the struggling, dependent hinterland of Central Canada - to become a full economic partner in Confederation.

In so aspiring, we do not seek to take away from others; we do not seek to displace anyone. We seek to strengthen the economy of part of Canada which has not been strong before.

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The instrument at hand in the 1970's was the growing value of our non-agricultural resources. And, we set out to build on that base. We believed we had a clear right to tax those resources. We believed we had a clear right to stage their development, to have a voice in controlling the rate of their production, and we undertook to do both.

Those rights were challenged by the resource companies and by the federal government. The Supreme Court of Canada upheld the challenges - to the consternation of many who thought the constitution was crystal clear on provincial rights to manage provincial resources.

What we now seek in constitutional reform is only to confirm the rights we understood we had. The right to tax. The right to a voice in the rate of resource production. We want assurance that we can do what we have done in the past.

And in seeking that reform, Mr. Prime Minister, I respectfully dispute your earlier division of the issues before us into two categories: issues of concern to people (your issues), and issues of concern only to governments (division of powers). In Saskatchewan, the issue of resources - because it is so vital to our future economic stability - is very much a concern of the people. It will determine whether their children will find jobs within 500 miles of home, whether there will be some sense of security in the home, whether they are likely to see their grandchildren often - very real and very personal issues to ordinary people.

POWERS OVER THE ECONOMY

We were heartened by your assurances in 1978, Mr. Prime Minister, that you understood the importance of resources to provinces like Saskatchewan. We were heartened by the significant measure of agreement in February 1979 on the draft amendment which would have given us the security we looked for.

Then, in July 1980, your position took a sharp turn. Gone was your agreement to key sections of the 1979 draft. And, we were told, an agreement on resources was to be linked to an agreement to insert redefined powers over the economy in the constitution.

Mr. Prime Minister, Saskatchewan has earned a reputation as an experimenter, an innovator in social and economic programs. We have drawn on our history and our co-operative spirit to try to overcome some of the disadvantages of our unstable economy

and our widely dispersed population. Some of the things we have done undoubtedly impede the free movement of goods, services, capital or labour.

Take compulsory public auto insurance, started in Saskatchewan, and copied by two other provinces. Government monopolies in this field have been founded or continued by NDP, Liberal, Conservative and Social Credit governments. This without doubt unduly interferes with the mobility of capital in the insurance industry.

Saskatchewan now requires mining companies operating in northern Saskatchewan to give a hiring preference to workers from that area of the province. This certainly impedes the free mobility of labour.

In order to preserve the family as farm operator, Saskatchewan restricts the ownership of farm land by non-residents. Clearly this impedes the mobility of capital for absentee owners.

But do the impediments in any of these examples outweigh the positive social benefits?

In placing this issue before us at the eleventh hour and saying that it must take precedence in constitutional discussions, Mr. Prime Minister, the burden of proof is on you to demonstrate:

- one, that major distortions exist;
- and two, that your proposal would correct them.

Certainly there are factors which cause major distortions in the operation of our economy. The availability and cost of transportation. Relative taxation and fiscal capacity. But none of these distortions is addressed by your new constitutional prohibition.

It is up to your government, Mr. Prime Minister, to demonstrate there are real and major problems out there which demand that this particular economic objective be virtually the only one enshrined in the constitution for decision by the courts.

Let me add one footnote which relates to this issue.

Whatever the intent of the federal government in introducing the issue of powers over the economy, it is widely viewed - and I believe justifiably so - as a move to shift to Ottawa greater economic power.

Now I was not in the front line in the referendum debate as you were, Mr. Chairman, and as Mr. Chretien was. But I did go to Quebec, as a Canadian, in support of a "no" vote. In the context of what Premier Levesque, on the one hand, and Mr. Ryan, on the other, were holding out to the people of Quebec, I said that, to me, a "no" vote was not a vote for the status quo, but a vote for renewed federalism. I said I would support constitutional change which clarified provincial control of resources, gave provinces a greater role in communications, reformed the Senate, and so on.

I cannot now, in good conscience, support changes in the constitution which will be viewed in Quebec, and correctly so, as strengthening central powers over the economy.

CONCLUSION

Let me conclude as I began, Mr. Chairman, by emphasizing the necessity of dealing with these questions in a manner consistent with the history of our country.

Our new constitution will be only as strong as its roots, only as strong as its relationship to our history and our people. It cannot be imposed upon us. It must be crafted in the spirit by which Canadians have approached all of their problems, a spirit of patience, tolerance, and co-operation. Our patience has a proven record Mr. Chairman. We are a people that has built one of the most tolerant, humane societies on the globe by searching out a just, middle road between often conflicting forces.

Our historical foundations have at the centre the coming together of peoples of two languages and two cultures. And that is important.

But since our founding, people have come from many lands and many cultures. We now occupy half a continent. The Canada of today has taken on new dimensions, geographically and culturally. And that too is important.

We are still a young country. We are still flexible. We are still becoming. As the distinguished Canadian scholar Malcolm Ross put it:

"I have always noted an urgency, sometimes a thwarted urgency, in Canadian life...the urgency of unfinished business. I have always felt that whereas the Fourth of July celebrated something that has already happened, July First celebrates something still happening".

In pursuing that unfinished business, I believe we have the opportunity to build on our origins and our history, a country in which all of our people can both wear the badge of their distinctiveness and proudly identify themselves as Canadians.

We can finish the business of building a country where Canadians of all kinds feel at home from coast to coast. Where French and English minorities, in sufficient numbers, have the right to their own language. Where, in all our multicultural diversity, we can learn from each other, appreciate each other.

If this implies tensions in our lives, I believe they are creative tensions. If this implies strong regional identities, I believe those identities are at the core of the Canadian identity.

"... as Canadians, we take our life from the fruitful collision and interpretation of many inheritances. And thus we grow."

So says Malcolm Ross. And I agree.

Let us, Mr. Chairman, get on with our unfinished business.

STATEMENT OF THE HONOURABLE JOHN M. BUCHANAN, Q.C., M.L.A.,
PREMIER OF NOVA SCOTIA, AT OTTAWA, 8 SEPTEMBER 1980.

PRIME MINISTER....MY FELLOW FIRST MINISTERS....MINISTERS....
OFFICIALS OF GOVERNMENT:

MAY I SAY IMMEDIATELY, PRIME MINISTER, HOW
GREATLY I VALUE THIS OPPORTUNITY, AT THIS TIME, TO SET
OUT THE COURSE NOVA SCOTIA WILL STEER AT THIS CONFERENCE,
THE ATTITUDES OF MIND AND HEART WHICH WILL BE OUR COMPASS
AND THE DESTINATION TO WHICH WE WILL POINT OUR BOW.

FOR SOME TIME, CANADA HAS BEEN BUSY BAILING.
THE TIME HAS COME TO FIX THE BOAT.

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MAY I RETELL A VIGNETTE FROM OUR HISTORY?

EACH OF US REMEMBERS HOW, IN ANOTHER SEPTEMBER, 116 YEARS AGO, DELEGATES FROM THEN CANADA, NEW BRUNSWICK, PRINCE EDWARD ISLAND AND NOVA SCOTIA MET IN CHARLOTTETOWN TO CONSIDER THE POSSIBILITIES OF UNION. FROM CHARLOTTETOWN THEY SAILED TO PICTOU IN THE CANADIAN GOVERNMENT STEAMER "QUEEN VICTORIA"---(MARITIMERS JOCULARLY CALLED HER "THE CONFEDERATE CRUISER"!) SOME DISEMBARKED AND WENT OVERLAND TO HALIFAX. IT IS INTERESTING TO RECALL, AND A MEASURE OF THE ADVANCES WE HAVE MADE, THAT THOSE WHO REMAINED IN THE STEAMER FOR THE PLEASANT CRUISE ROUND CAPE CANSO ARRIVED BEFORE THE OVERLAND PARTY FROM PICTOU, 100 MILES AWAY. TRANSPORTATION IS NOT A NEW PROBLEM IN THE MARITIMES.

THE DELEGATES RESUMED THEIR DELIBERATIONS ON SEPTEMBER 10. TWO DAYS LATER, SHORTLY AFTER NOON ON THE 12TH OF SEPTEMBER, THE DOORS OF THE CONFERENCE WERE OPENED TO ANNOUNCE THE HISTORIC DECISION THAT A NEW CONFERENCE WOULD BE HELD AT QUEBEC TO ESTABLISH A FEDERAL UNION.

· THAT NIGHT, A GREAT DINNER WAS HELD AT THE HALIFAX HOTEL IN HONOUR OF THE DELEGATES. SIR CHARLES TUPPER, PROVINCIAL SECRETARY OF NOVA SCOTIA AND, AT A LATER DATE, PRIME MINISTER, ACTED AS CHAIRMAN. THOSE WHO SPOKE INCLUDED GEORGES ETIENNE CARTIER OF CANADA EAST, GEORGE BROWN OF CANADA WEST, LEONARD TILLEY OF NEW BRUNSWICK, COLONEL GRAY OF PRINCE EDWARD ISLAND, ALEXANDER GALT, THOMAS DARCY MCGEE, (OF WHOM IT WAS SAID HE HAD BEEN BORN WITH A HARP IN HIS THROAT), AND---JOHN A. MACDONALD.

ON THURSDAY MORNING, THE 15TH OF SEPTEMBER, 1864, "THE BRITISH COLONIST" NEWSPAPER OF HALIFAX PUBLISHED A PHONOGRAPHIC REPORT OF THE STIRRING SPEECHES DELIVERED ON THAT HISTORIC OCCASION.

MAY I PRESENT TO YOU, PRIME MINISTER, A REPRINT OF THAT NEWSPAPER? IT RECORDS, FROM OUR BEGINNINGS, WORDS OF UNDERSTANDING, CONCILIATION AND VISION THAT ARE STILL VALID FOR US TODAY.

HEAR THE VOICE OF GEORGES ETIENNE CARTIER,
ATTORNEY GENERAL FOR CANADA EAST. HE SAID:

"IS IT NOT WITHIN OUR POWER TO FORM A
VIGOROUS CONFEDERATION, LEAVING TO THE
LOCAL GOVERNMENTS THE POWER OF DEALING
WITH THEIR OWN LOCAL MATTERS? THERE
ARE DIFFICULTIES IN THE WAY, BUT THEY
ARE SUSCEPTIBLE OF SOLUTION IF MANAGED
WITH WISDOM. ALL THAT IS REQUISITE TO
OVERCOME DIFFICULTIES IS A STRONG WILL
AND A GOOD HEART."

AND THESE GREAT WORDS FROM JOHN A. MACDONALD,
THE FIRST OF THE FATHERS OF CONFEDERATION AND THE FIRST
OF THE HONOURED MEN WHO HAVE HELD THE OFFICE YOU NOW
HOLD, PRIME MINISTER:

"SIR, THIS MEETING IN HALIFAX WILL BE EVER REMEMBERED IN HISTORY, FOR HERE THE DELEGATES FROM THE SEVERAL PROVINCES HAD THE FIRST OPPORTUNITY OF EXPRESSING THEIR SENTIMENTS. WE HAVE BEEN UNABLE TO ANNOUNCE THEM BEFORE, BUT NOW LET ME SAY THAT WE HAVE ARRIVED UNANIMOUSLY AT THE OPINION THAT THE UNION OF THE PROVINCES IS FOR THE ADVANTAGE OF ALL, AND THAT THE ONLY QUESTION THAT REMAINS TO BE SETTLED IS WHETHER THAT UNION CAN BE ARRANGED WITH A DUE REGARD TO SECTIONAL AND LOCAL INTERESTS. I HAVE NO DOUBT THAT SUCH AN ARRANGEMENT CAN BE EFFECTED, THAT EVERY DIFFICULTY WILL BE FOUND SUSCEPTIBLE OF SOLUTION, AND THAT THE GREAT PROJECT WILL BE SUCCESSFULLY AND HAPPILY REALIZED."

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WHAT CARTIER AND MACDONALD SAID THEN CAN WITH EQUAL FORCE BE SPOKEN AMONG US TODAY. THE VISION THEN, THE CONVICTION THEN, THE GOODWILL THEN, ARE THE GOODWILL, CONVICTION AND VISION THAT SHOULD ANIMATE US NOW.

NOVA SCOTIA WILL WORK HERE WITH ALL OF LIKE KIND, IN EARNESTNESS AND DETERMINATION, TO STRENGTHEN CANADA. WE MUST NOT ALLOW OURSELVES TO FEEL THAT THE TASK WE HAVE SET FOR OURSELVES IS TOO GREAT, BECAUSE IT IS NOT; TOO COMPLEX, BECAUSE IT IS NOT; TOO DIFFICULT; BECAUSE IT IS NOT. THE TRUE NATURE OF OUR BEING HERE IS TO REACH THAT BALANCE WHERE CANADA IS STRONG BECAUSE EACH PROVINCE IS ABLE FULLY TO DEVELOP ITS POTENTIAL. WE CAN SUCCEED IF WE HAVE THE WILL TO SUCCEED.

WHEN WE MET AS FIRST MINISTERS IN JUNE, WE SET FOR OUR MINISTERS AND OFFICIALS THE SUMMER-LONG TASK OF DISCUSSING TWELVE SUBJECTS, TO DETERMINE EACH OF OUR VIEWS AND OPINIONS AND THE MANNER IN WHICH AGREEMENT MIGHT BE ATTAINED. THEY HAVE SPENT THE WHOLE SUMMER IN EARNEST AND DILIGENT EFFORTS. I BELIEVE THAT WE ARE NOW VERY CLOSE TO ACCOMMODATION ON MANY MATTERS. IN THIS OPENING STATEMENT, I PROPOSE TO REFER BUT BRIEFLY TO ONLY THREE SUBJECTS BEFORE US, NOT AT ALL BECAUSE THE OTHERS ARE WITHOUT IMPORTANCE, BUT BECAUSE THESE THREE DEMONSTRATE THE PURPOSES AND CONVICTIONS WHICH NOVA SCOTIA BELIEVES SHOULD ANIMATE EACH OF US THROUGHOUT OUR DELIBERATIONS AND BECAUSE THERE WILL BE OTHER OCCASIONS DURING THE NEXT FEW DAYS FOR DISCUSSION OF THESE AND THE OTHERS.

WE HAVE ALL UNDERSTOOD THAT THE DOMICILING OF CANADA'S CONSTITUTION IN CANADA SHOULD BE ACCOMPANIED BY AN AGREEABLE FORMULA FOR SUBSEQUENT AMENDMENT. NOVA SCOTIA BELIEVES THAT OUR CONFERENCE THIS WEEK SHOULD BE ABLE, FROM AMONG THE ALTERNATIVES REPORTED TO US BY OUR MINISTERS AND OFFICIALS ARISING OUT OF THEIR SERIES OF MEETINGS, TO DECIDE THE REQUIREMENTS FOR SUBSEQUENT AMENDMENT OF OUR CONSTITUTION. NOVA SCOTIA IS READY TO REACH AGREEMENT ON THE DOMICILING OF CANADA'S CONSTITUTION WITH AN ACCEPTABLE FORMULA FOR AMENDMENT.

WE ENTERED CONFEDERATION IN 1867 AS A PROSPEROUS PROVINCE. THE ANTICIPATION OF OUR PEOPLE WAS THAT WE WOULD ENJOY EVEN GREATER PROSPERITY AS PART OF CANADA. AFTER 113 YEARS, WE KNOW THAT OUR EXPECTATION HAS NOT BEEN REALIZED. IT IS MY RESPONSIBILITY TO NEGOTIATE THE BASIS UPON WHICH THE EXPECTATION OF YESTERDAY CAN NOW BE REALIZED. IN MY VIEW, THE POTENTIAL FOR THE REALIZATION OF THAT GOAL LIES IN THE OFFSHORE GAS AND OIL AND OTHER ENERGY RESOURCES.

MR. PRIME MINISTER, IN THE SHORT TIME ALLOTTED TO ME THIS MORNING I AM NOT GOING TO ENUMERATE NOR DISCUSS ALL OF THE ITEMS ON THE AGENDA. I HAVE ALREADY INDICATED MY BELIEF THAT IF CERTAIN CONDITIONS EXIST THAT WE CAN AND WILL ACCOMPLISH MANY OF THOSE ITEMS WHICH WILL BE INDICATIVE OF A SUCCESSFUL CONFERENCE. I DO WISH, HOWEVER, IN LIGHT OF WHAT I HAVE SAID THUS FAR, TO SAY THAT WE, NOVA SCOTIANS, HAVE A RIGHT TO 100% OF THE REVENUES WHICH WE ALL HOPE WILL FLOW FROM OFFSHORE GAS AND OIL RESOURCES, THE SAME REVENUES WHICH ARE EXTRACTED BY PROVINCES WITH RESPECT TO ONSHORE RESOURCES.

WE ASK THAT THE RIGHT TO ENACT CONTROLS OF A PROVINCIAL NATURE BE RECOGNIZED IN ORDER THAT WE, AS A PROVINCE, MAY ENSURE THE PRESERVATION OF TRADITIONAL SOCIAL VALUES AND PATTERNS. AT PRESENT IN NOVA SCOTIA, WE ARE BEGINNING AN EDUCATION AND TRAINING PROGRAM IN ORDER TO ENSURE THAT YOUNG NOVA SCOTIANS WILL HAVE THE NECESSARY SKILLED TRAINING TO ENABLE THEM TO TAKE ADVANTAGE OF THE OPPORTUNITIES WHICH WE BELIEVE WILL BE OPENING AS A RESULT OF OFFSHORE GAS AND OIL EXPLORATION AND COMMERCIAL DEVELOPMENT. IT IS IMPERATIVE, THEREFORE, THAT OUR PROVINCE EXERT A MEASURE OF CONTROL RELATING TO PROVINCIAL PRIORITIES.

MR. PRIME MINISTER, WHAT WE ARE ASKING IS THAT, IN EFFECT, WE HAVE THE FINANCIAL ABILITY TO REVERSE EQUALIZATION PAYMENTS, BEGIN PAYING OUR PROVINCIAL LONG TERM DEBT AND, IN EFFECT, BECOME A HAVE PROVINCE. CAN ANYONE SERIOUSLY QUESTION THE REASONABLENESS OF THAT QUESTION? IS IT NOT FAIR, JUST AND REASONABLE? WE BELIEVE THAT IT CANNOT BE QUESTIONED AND WE FURTHER BELIEVE THAT IT IS FAIR, JUST AND REASONABLE.

"THAT THERE ARE DIFFICULTIES IN THE WAY WOULD BE FOLLY TO DENY," JOHN A. MACDONALD TOLD THE DELEGATES ON THAT OTHER SEPTEMBER DAY. "THAT THERE ARE IMPORTANT QUESTIONS TO BE SETTLED BEFORE THE PROJECT CAN BE CONSUMMATED IS OBVIOUS. BUT WHAT GREAT SUBJECT THAT HAS EVER ATTRACTED THE ATTENTION OF MANKIND HAS NOT BEEN FRAUGHT WITH DIFFICULTIES? WE WOULD NOT BE WORTHY OF THE POSITION IN WHICH WE HAVE BEEN PLACED BY THE PEOPLE IF WE DID NOT MEET AND OVERCOME THESE OBSTACLES."

IT IS IN THAT SPIRIT THAT NOVA SCOTIA, ONE OF THE FOUNDING PARTNERS, COMES TO THIS CONFERENCE TO RENEW AND REVITALIZE THE ASPIRATIONS OF OUR PEOPLE. WE ARE READY TO NEGOTIATE, TO GIVE AND TAKE, AND TO REACH AGREEMENTS. WE RECOGNIZE FEDERAL RIGHTS WHERE THEY ARE APPROPRIATE. OUR INTENT IS TO UNDERSTAND AND TO REASON; OUR COURSE, TO STEER STRAIGHT AND TRUE.

THE UNION OF THE PROVINCES CAN BE FOR THE ADVANTAGE OF ALL. THE QUESTION THAT REMAINS TO BE SETTLED IS WHETHER THAT UNION CAN BE ARRANGED WITH A DUE REGARD TO SECTIONAL AND LOCAL INTERESTS.

NOVA SCOTIA HAS NO DOUBT THAT SUCH AN
ARRANGEMENT CAN BE EFFECTED, THAT EVERY DIFFICULTY WILL
BE FOUND SUSCEPTIBLE OF SOLUTION, AND THAT THE GREAT
PROJECT WILL BE SUCCESSFULLY AND HAPPILY REALIZED.

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THANK YOU, PRIME MINISTER.

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OPENING STATEMENT

BY

HONOURABLE A. BRIAN PECKFORD

PREMIER & MINISTER FOR INTERGOVERNMENTAL AFFAIRS

AT

FEDERAL-PROVINCIAL FIRST MINISTERS CONFERENCE

ON THE

CONSTITUTION

OTTAWA

SEPTEMBER 8-12, 1980

OVER THE PAST SEVERAL YEARS THE POLITICAL LEADERSHIP OF THIS COUNTRY HAS BEEN WRESTLING WITH CONSTITUTIONAL CHANGE. THE MERE FACT THAT THIS WAS BEGUN INDICATES THAT THE PROVINCES AND THE FEDERAL GOVERNMENT HAVE RECOGNIZED THE INADEQUACY OF THE PRESENT SYSTEM. I THINK IT IS IMPORTANT TO NOTE THAT THIS REALIZATION DIDN'T BEGIN - HAPPEN THIS YEAR - BUT MANY YEARS AGO. EVENTS, HOWEVER, OVER THE LAST YEAR OR TWO, HAVE BROUGHT INTO CLEARER FOCUS THIS NEED FOR REFORM - FOR MAJOR CHANGE - FOR RENEWAL - FOR A NEW CONSTITUTION MADE IN CANADA.

DURING SPRING AND SUMMER NEW IMPETUS WAS GIVEN TO THIS NEED BY A HOTLY CONTESTED REFERENDUM CAMPAIGN IN QUEBEC. WE RECALL OUR COLLECTIVE SENSE OF RELIEF AT THE OUTCOME OF THIS VOTE IN QUEBEC. MANY OF US CAUTIONED, HOWEVER, THAT ALTHOUGH THE NO SIDE WON - THERE WAS A STRONG - MAJORITY VOTE FOR CHANGE.

THE PRIME MINISTER GRASPED THIS SENSE FROM THE VOTE - FOR HE SAID IN HIS PREPARED SPEECH IN THE HOUSE OF COMMONS THE DAY AFTER THE REFERENDUM - "ALTOGETHER WHAT QUEBECERS EXPRESSED YESTERDAY WAS A MASSIVE SUPPORT FOR CHANGE WITHIN THE FEDERAL FRAMEWORK" AND, FURTHERMORE, THAT BESIDES A RENEWED COMMITMENT TO A FEDERAL SYSTEM AND AN AGREED STATEMENT OF PRINCIPLES "...THAT WE CONSIDER EVERYTHING ELSE TO BE NEGOTIABLE".

IT WAS IN THIS SPIRIT THAT THE GOVERNMENT OF NEWFOUNDLAND ENTHUSIASTICALLY PARTICIPATED IN THE PROCESS OF CONSTITUTIONAL CHANGE THAT WAS THEN BEGUN. IT IS IN THIS SPIRIT THAT WE PARTICIPATE IN THIS CONFERENCE. HOWEVER, ALTHOUGH WE RECOGNIZE THE "QUEBEC FACT" AND THE REFERENDUM, THERE ARE THROUGHOUT THIS NATION DEEP FRUSTRATIONS THAT MUST BE ADDRESSED - FROM BRITISH COLUMBIA TO NEWFOUNDLAND.

SINCE THOSE MOMENTOUS BRIGHT SUNNY DAYS OF EARLY SPRING AND SUMMER, A LOT OF HARD WORK HAS BEEN DONE, MANY STATEMENTS MADE, AND IT SEEMS, MANY POSITIONS TAKEN, - SOME OF WHICH HAVE COME DANGEROUSLY CLOSE TO UNDERMINING THIS CONFERENCE. FOR ITS PART, THE GOVERNMENT OF NEWFOUNDLAND ISSUED A WHITE PAPER ON THE CONSTITUTION OUTLINING ITS VIEWS WITH PARTICULAR ATTENTION TO THE LIST OF TWELVE. UNDERLYING OUR APPROACH ARE FOUR FUNDAMENTAL PRINCIPLES - THEY ARE:

1. PARLIAMENTARY DEMOCRACY;
2. BALANCED FEDERALISM;
3. EQUALITY OF OPPORTUNITY FOR PROVINCES AND PEOPLE;
4. CONSENSUS.

1. PARLIAMENTARY DEMOCRACY

THE GOVERNMENT OF NEWFOUNDLAND, REFLECTING THE VIEW OF THE PEOPLE OF THE PROVINCE, BELIEVES THAT THE CONSTITUTIONAL MONARCHY SHOULD CONTINUE AS THE BASIS OF SOVEREIGNTY AND PARLIAMENTARY DEMOCRACY FOR THE FEDERAL AND PROVINCIAL GOVERNMENTS.

2. BALANCED FEDERALISM

THE NEWFOUNDLAND GOVERNMENT FIRMLY BELIEVES IN A FEDERATION WHERE BOTH THE FEDERAL AND PROVINCIAL GOVERNMENTS ARE STRONG AND VIABLE. THE NATION CAN ONLY BE AS STRONG AS ITS CONSTITUENT PARTS. IN THE CONSTITUTIONAL PROCESS, THEREFORE, IT IS NECESSARY FOR ALL ELEVEN GOVERNMENTS TO AGREE UPON A DISTRIBUTION OF AUTHORITY WHICH WILL ALLOW BOTH THE FEDERAL GOVERNMENT AND THE PROVINCIAL GOVERNMENTS TO FULFILL THEIR RESPONSIBILITIES EFFECTIVELY.

THE NEWFOUNDLAND GOVERNMENT DOES NOT VIEW CANADA AS DEVELOPING INTO A UNITARY STATE WITH ALL THE POWER GRAVITATING TO THE CENTRAL GOVERNMENT. NOR DOES IT VIEW CANADA BECOMING A LOOSE ASSOCIATION OF PROVINCES WHICH WOULD EMASCULATE THE FEDERAL GOVERNMENT AND DENY CANADA AN EFFECTIVE VOICE IN THE FORUM OF NATIONS.

WHAT IS REQUIRED IS A REALISTIC BALANCE, A SHARING OF POWER SO THAT THE GOVERNMENT WITH THE MOST IMMEDIATE CONNECTION, THE MOST VITAL LINK WITH A RESOURCE OR ACTIVITY, WILL HAVE THE NECESSARY AUTHORITY. THE IDENTIFICATION OF THE APPROPRIATE BALANCE IS NOT A QUESTION OF ACADEMIC THEORIZING BUT RATHER ONE OF REALISTIC ASSESSMENT. THIS BALANCE WILL NOT BE ACHIEVED BY EMULATING OTHER FEDERAL SYSTEMS BUT BY IDENTIFYING THE BALANCE CORRESPONDING TO OUR OWN EXPERIENCE AND EXPECTATIONS, RECOGNIZING THE UNIQUE NATURE OF THE CANADIAN EXPERIMENT.

3. EQUALITY OF OPPORTUNITY FOR PROVINCES AND PEOPLE

THE NEWFOUNDLAND GOVERNMENT'S APPROACH TO CONSTITUTIONAL CHANGE IS ROOTED IN THE BELIEF THAT THERE MUST BE EQUALITY OF PROVINCES AND PEOPLE. WHETHER LARGE OR SMALL IN AREA OR POPULATION, WHETHER RECIPIENT OR CONTRIBUTOR IN THE PROCESS OF EQUALIZATION, WHETHER PREDOMINANTLY ENGLISH-SPEAKING OR FRENCH-SPEAKING, WHETHER ITS RESOURCES ARE LARGELY LAND-BASED OR SEA-BASED, THE JURIDICAL EQUALITY OF THE PROVINCES IS THE FOUNDATION OF OUR COMPLEX RELATIONSHIPS.

EACH PROVINCE MUST HAVE AN EQUAL RIGHT TO MAINTAIN AND DEVELOP ITS CULTURAL ROOTS AND TRADITIONAL VALUES, NOT JUST AS AN OBJECT OF FOLKLORIC INTEREST BUT AS THE LIFE BLOOD OF ITS PEOPLES' IDENTITY. SIMILARLY, THE FEDERAL GOVERNMENT MUST HAVE THE RIGHT TO MAINTAIN AND DEVELOP THE NATIONAL IDENTITY AND TRADITIONS COMMON TO ALL CANADIANS.

THE FACT OF DUALITY - IN OFFICIAL LANGUAGES, IN LEGAL TRADITIONS, IN SOCIAL AND CULTURAL VALUES - EVOLVED FROM A UNIQUE HISTORY IN CANADA. IT IS THIS BACKGROUND WHICH ENRICHES AND STRENGTHENS EACH PART OF THE NATION AND, HENCE, THE NATION AS A WHOLE. NEWFOUNDLAND SUPPORTS THE RECOGNITION OF THIS DUALITY IN THE CONSTITUTION.

IN ACCORDANCE WITH THE FUNDAMENTAL PRINCIPLE OF THE EQUALITY OF PROVINCES IS THE AFFIRMATION OF THE EQUALITY OF PEOPLE - THE NATIVE PEOPLE, THE DIVERSE MULTI-CULTURAL POPULATION, PEOPLE OF BOTH SEXES AND OF ALL ORIGINS, CREEDS AND BELIEFS. IN ITS PEOPLE, THEIR DIVERSITY AND UNITY, LIES THE ULTIMATE WEALTH OF CANADA.

UNFORTUNATELY, THERE IS NOT EQUALITY AMONG THE PROVINCES AND PEOPLE IN CANADA TODAY. MOST PROVINCES, LARGELY THROUGH CONSTITUTIONAL AMENDMENT, HAVE ATTAINED CONTROL OF THEIR NATURAL RESOURCES AND, HENCE, ARE IN A POSITION TO MAINTAIN AND DEVELOP THEIR SOCIETIES AND ECONOMIES AS THEY DEEM NECESSARY. SEVERAL PROVINCES, INCLUDING NEWFOUNDLAND, HAVE NOT AS YET ATTAINED THE SAME DEGREE OF CONTROL AND, THEREFORE, CANNOT DEVELOP THEIR CULTURE AND HERITAGE ON AN EQUAL BASIS WITH OTHER PROVINCES. THE NEW CANADIAN CONSTITUTION MUST REFLECT THE PRINCIPLE OF EQUALITY WITH RESPECT TO RESOURCES.

4. CONSENSUS

FLOWING FROM THE COMMITMENT TO THESE PRINCIPLES IS THE GOVERNMENT'S CONVICTION THAT A NEW CONSTITUTION, REFLECTING THE REALITIES OF TODAY, CAN ONLY EVOLVE FROM THE PROCESS OF CONSENSUS.

THE GOVERNMENT OF NEWFOUNDLAND BELIEVES THAT UNILATERAL ACTION BY ANY ONE OF THE PARTNERS IN THE FEDERATION TODAY IS TOTALLY UNACCEPTABLE. TO SUCCUMB TO THE TEMPTATION OF UNILATERAL ACTION WOULD HAVE THE EFFECT OF CREATING GREATER DIVISIONS

WITHIN THE NATION THAN NOW EXIST AND OF FRUSTRATING THE ASPIRATIONS OF ALL CANADIANS WHO LOOK TO THE PROCESS OF CONSTITUTIONAL REFORM AS A MEANS OF STRENGTHENING AND UNIFYING THE NATION.

MR. CHAIRMAN, MAY I SAY THAT NEWFOUNDLANDERS AND LABRADORIANS DESIRE TO RETURN A FAVOUR - WE ARE NOT UNFAMILIAR WITH REFERENDA AND MOMENTOUS DECISIONS - CONFEDERATION HAS BEEN A BLESSING, CREATING A SOCIAL REVOLUTION IN OUR PROVINCE BEYOND ANYTHING WE HAVE KNOWN IN OUR HISTORY - BUT WE UNDERSTOOD THAT CONFEDERATION MEANT NOT JUST "HELP", "ASSISTANCE", "SUPPORT", WHEN YOU WERE DOWN BUT ALSO SOMETHING MORE DYNAMIC - AND CREATIVE - A PROCESS THAT COULD UPLIFT THE HUMAN SPIRIT AND MAKE IT REAL - A CHANCE FOR SELF EXPRESSION, THE PROPER DEVELOPMENT OF OUR RESOURCES SO THAT THE FLOW OF WEALTH COULD BE REVERSED THEREBY TRANSFORMING AN APATHIC SOCIETY OF TRANSFER PAYMENT RECIPIENTS INTO A PROUD, HAPPY PEOPLE, GENERATING SUFFICIENT WEALTH TO MAKE A DYNAMIC PROVINCE AND A WEALTHIER, STRONGER NATION. IT'S THIS SECOND, REWARDING PROCESS THAT CANNOT BE ACHIEVED UNDER THE PRESENT SYSTEM BY A PROVINCE WITH THE WILL AND RESOURCES TO DO IT.

THE CENTRAL QUESTION, THEN, FOR US IS:-
CAN THIS NATION ALLOW THE SAME OPPORTUNITY IN 1980 FOR NEWFOUNDLAND TO "PROSPER" OVER THE NEXT 50 YEARS AS WAS ALLOWED OTHER PROVINCES OVER THE PAST 50 YEARS - WILL THE EQUALITY OF TREATMENT PRINCIPLE BE UPHELD? IS THERE ONE LAW FOR "THE RICH AND ANOTHER FOR THE POOR"? ARE WE COMMITTED TO A FEW LARGE PERMANENTLY WEALTHY PROVINCES AND SEVERAL SMALL PERMANENTLY POOR PROVINCES? THE FINAL ANSWER TO THESE QUESTIONS WILL BE FOUND IN THE SOLUTION TO THREE SUBJECTS: - THE FISHERY, OFFSHORE RESOURCES, AND THE TRANSMISSION OF ELECTRICITY.

WE WILL BE RECIPIENTS OF SOMEONE ELSE'S WEALTH ETERNALLY IF THE SAME "EQUAL TREATMENT" IS NOT AFFORDED TO US AS ALREADY BEEN AFFORDED OTHER CANADIANS. WE ASK NOT FOR SPECIAL TREATMENT, BUT EQUAL TREATMENT - NOT FOR UNFAIR ADVANTAGE, BUT EQUAL CHANCE. HOW CAN WE DEAL WITH THE INSHORE/LOCAL FISHERY IF WE HAVE NO POWER? HOW CAN WE DEAL WITH OIL AND GAS IMPACT UPON THAT FISHERY IF WE HAVE NO POWER? HOW CAN WE MATERIALLY AFFECT OUR CREDIT RATING IF WE ARE NOT ALLOWED TO EARN BY OUR OWN SWEAT MORE THAN CANADA NOW GIVES US? HOW CAN WE PROTECT A HIGHLY VULNERABLE SENSITIVE RURAL SOCIETY WITHOUT ANY MEANINGFUL CONTROL OF THOSE THINGS WHICH IMPACT UPON IT? HOW CAN WE REINFORCE AND ENHANCE WHAT WE ARE - AND FERVENTLY WISH TO BE - AN AFFLUENT RURAL SOCIETY GENERATING AN ENERGY AND CULTURE THAT WOULD RIVAL ANYWHERE WITHOUT SOME REAL SAY OVER OUR DEVELOPMENT? HOW, THEN, CAN WE BE HAPPY AND PROUD?

THIS CAN ALL BE ACCOMPLISHED WITHIN A VISION OF CANADA AND HENCE UNDER A NEW CONSTITUTION WHICH GENUINELY RECOGNIZES THE "DIVERSITY OF THIS LAND". CANADA IS STRONG IF ITS PARTS ARE STRONG - CANADA IS WEAK IF ITS PARTS ARE WEAK. WHAT WE NEED IS A BALANCED FEDERALISM - ONE THAT WILL ALLOW FOR THE ENHANCEMENT AND ENRICHMENT OF ITS DIVERSITY SO THAT THE ENERGY AND CREATIVITY THAT BROUGHT US TOGETHER IN THE FIRST PLACE CAN CONTINUE TO THRIVE.

AS NEWFOUNDLANDERS WE HAVE BEEN SURPRISED AND THEN AMUSED AT REACTION, ESPECIALLY IN CENTRAL CANADA, TO RUMOURS IN RECENT MONTHS ABOUT SOME POTENTIAL WEALTH WE MAY POSSESS. OUR REACTION HAS BEEN SUCH FOR TWO REASONS. FIRST, THE REACTION SEEMS TO IMPLY THAT UP TO NOW WE'VE HAD LITTLE WEALTH TO SPEAK OF AND SECONDLY THAT THIS NEW POTENTIAL MUST BE JUST FOR NEWFOUNDLANDERS AND LABRADORIANS AND NOT

FOR ALL CANADIANS. OUR WEALTH HAS ALWAYS BEEN MASSIVE. THE WAY THAT WEALTH HAS BEEN DEVELOPED HAS BEEN THE PROBLEM AND WHY WE ARE STILL AT THE BOTTOM OF THE CONFEDERATION LADDER, THAT IS WHY THAT THIS TIME WE SAY IT MUST BE DIFFERENT. AT THE SAME TIME, HOWEVER, WE WANT TO AND WILL SHARE. WE WANT TO REVERSE THE TIDE OF EQUALIZATION - TO PAY BACK AND HENCE MAKE CANADA STRONG. ALL WE ASK IS EQUAL OPPORTUNITY TO DEVELOP - WHICH WE BELIEVE IS A GREAT CANADIAN CONCEPT. APPROXIMATELY ONE QUARTER OF ALL REVENUES FROM OFFSHORE DEVELOPMENT WOULD GO TO THE FEDERAL TREASURY DIRECTLY - THE FEDERAL ENVIRONMENT DEPT. AND THE NATIONAL ENERGY BOARD, WOULD BE DEEPLY INVOLVED.

THE ISSUE IS NOT THE COMEDY OF WHAT HAPPENS TO CANADA IF NEWFOUNDLAND BECOMES A HAVE PROVINCE IN SOME UNIDENTIFIED DISTANT ERA, WHICH SEEMS TO BE THE PRE-OCCUPATION OF SOME - NOR THE PARANOIA THAT NEWFOUNDLAND MUST BE STOPPED FROM HAVING A MEANINGFUL SHARE IN SOMETHING THAT WE MIGHT HAVE, BUT RATHER THE HERE AND NOW AND WHETHER NEWFOUNDLAND WILL BE GIVEN A CHANCE TO PULL ITSELF UP BY ITS OWN BOOTSTRAPS AND REPLACE EQUALIZATION AND THUS MEANINGFULLY CONTRIBUTE TO CANADA.

THE VERY NOTION OF SELFISHNESS AND GREED THAT SOME UNINFORMED ACCUSE US OF BASED ON A MAYBE ITSELF IS PROOF POSITIVE OF WHY IN A LARGE COUNTRY LIKE OURS THAT THE OWNERSHIP OF RESOURCES CONCEPT IS SO CRITICAL. THESE NOTIONS NOT ONLY DEMONSTRATE AN ABYSMAL LACK OF KNOWLEDGE BUT SHOW HOW FAR DOWN IN CANADIAN TERMS WE REALLY SEEM TO BE.

IN 1896, D. W. PROWSE SAID

"WHAT THE FUTURE WILL BRING FORTH FOR NEWFOUNDLAND IS THE SUBJECT OF MUCH ANXIOUS THOUGHT. SOMEONE SAID LATELY NEWFOUNDLAND MUST BE A GREAT COUNTRY TO HAVE SURVIVED SUCH A SERIES OF DISASTERS; LIKE A STAUNCH OLD SHIP SHE HAS WEATHERED THE GALE; SOME OF HER TOP HAMPER AND RIGGING HAVE GONE, BUT HER HULL AND SPARS ARE SOUND. I, FOR ONE, BELIEVE THAT NEWFOUNDLAND HAS A BRIGHT FUTURE IN STORE FOR HER."

A 100 YEARS LATER CAN WE SAY, AS A RESULT OF THIS PROCESS, THAT THIS GOAL IS NOW WITHIN REACH. IT IS MY HOPE, AND I BELIEVE THE HOPE OF ALL NEWFOUNDLANDERS, THAT IT WILL BE SO.

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SPEAKING NOTES
ON
FISHERIES
FOR
A. BRIAN PECKFORD
PREMIER OF NEWFOUNDLAND
AND
MINISTER FOR INTERGOVERNMENTAL AFFAIRS
AT
FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS
ON THE
CONSTITUTION

OTTAWA

SEPTEMBER 8-12, 1980

MR. CHAIRMAN, THERE IS A BROAD APPRECIATION BY CANADIANS OF THE IMPORTANT ROLE WHICH THE FISHERY PLAYS IN THE ECONOMIES OF THE COASTAL PROVINCES. THIS SECTOR IS ALSO AN IMPORTANT FEATURE OF THE ECONOMIES OF CERTAIN INLAND PROVINCES. HOWEVER, A SIMPLE ACKNOWLEDGEMENT THAT FISHERIES IS IMPORTANT TO US GROSSLY UNDERSTATES THE PERVASIVE IMPACT WHICH THIS SECTOR HAS IN THE WHOLE ECONOMY OF NEWFOUNDLAND. FURTHERMORE, IT FAILS TO RECOGNIZE THE ESSENTIAL PLACE WHICH THE FISHERY OCCUPIES IN THE SOCIAL AND CULTURAL DEVELOPMENT OF OUR PEOPLE.

VIRTUALLY EVERY COASTAL COMMUNITY ON THE ISLAND OF NEWFOUNDLAND AND ON THE COAST OF LABRADOR DEPENDS ON THE FISHERY AS ITS PRINCIPAL SOURCE OF ECONOMIC ACTIVITY. THEREFORE, DECISIONS TAKEN REGARDING FISHERIES MANAGEMENT DETERMINE WHETHER THESE COMMUNITIES WILL THRIVE AND FLOURISH OR WHETHER THEY WILL WITHER AND DIE.

BUT, MR. CHAIRMAN, THE IMPACT OF THESE DECISIONS GOES FAR BEYOND THE INDIVIDUAL COMMUNITIES WHICH ARE IMMEDIATELY CONCERNED. THE WHOLE PROCESS OF DELIVERING PUBLIC SERVICES, ROADS, SCHOOLS, HOSPITALS, ETC., IS INVOLVED.

IT CAN COME AS NO SURPRISE, THEREFORE, THAT THE GOVERNMENT OF NEWFOUNDLAND INSISTS THAT IT IS ABSOLUTELY ESSENTIAL THAT THERE BE A CONSTITUTIONAL PROVISION ENSURING A ROLE FOR THE PROVINCE IN FISHERIES MANAGEMENT.

THERE IS NO CREDIBLE ARGUMENT WHICH CAN BE MADE TO DENY THIS RIGHT TO COASTAL PROVINCES. INDEED, BY THE FEDERAL

GOVERNMENT'S OWN ARGUMENT IN THE LAW OF THE SEA CONFERENCE IT IS THE INTERESTS AND DEPENDENCE OF COASTAL COMMUNITIES WHICH JUSTIFIES EXTENDED FISHERIES JURISDICTION BY CANADA. IT IS INCONSISTENT AND ILLOGICAL FOR THE FEDERAL GOVERNMENT TO MAINTAIN THAT IT, EXCLUSIVELY, MUST HAVE JURISDICTION IN THIS AREA. THE LOCAL ASPECTS OF FISHERIES JURISDICTION ARE MATTERS WHICH PROPERLY RESIDE IN THE PROVINCIAL LEGISLATURES.

NEWFOUNDLAND HAS PROPOSED A SYSTEM OF CONCURRENT JURISDICTION FOR SEA-COAST FISHERIES. UNDER OUR PROPOSAL THE FEDERAL GOVERNMENT CONTINUES TO EXERCISE PARAMOUNT JURISDICTION OVER THE INTERNATIONAL ASPECTS OF THE FISHERIES AND OVER IMPORTANT NATIONAL ASPECTS SUCH AS CONSERVATION OF THE RESOURCE. HOWEVER, OTHER ASPECTS OF FISHERIES MANAGEMENT WHICH HAVE AN ESSENTIALLY LOCAL OR PROVINCIAL CHARACTER SHOULD COME UNDER PROVINCIAL JURISDICTION.

MR. CHAIRMAN, THE NEWFOUNDLAND APPROACH DOES NOT SEEK TO EXCLUDE THE FEDERAL GOVERNMENT IN ANY AREA. THE UNDERLYING PRINCIPLE IS SHARED JURISDICTION. OUR PROPOSAL IS AN EFFECTIVE REFLECTION OF THE BASIC PRINCIPLE THAT THE GOVERNMENT WITH THE MOST IMMEDIATE CONNECTION WITH AN AREA OF AUTHORITY SHOULD HAVE JURISDICTION IN THAT AREA.

I WANT TO MAKE IT ABUNDANTLY CLEAR THAT, IN ADVANCING THESE PROPOSALS, THE GOVERNMENT OF NEWFOUNDLAND DOES NOT SEEK OWNERSHIP OF ANY FISH STOCK. OUR PROPOSAL RELATES SOLELY TO LEGISLATIVE JURISDICTION.

MR. CHAIRMAN, TO THIS POINT I HAVE ADDRESSED MYSELF TO THE QUESTION OF SEA COAST FISHERIES BECAUSE OF THE OVER-RIDING IMPORTANCE OF THAT SECTOR TO NEWFOUNDLAND. HOWEVER, I AM FULLY AWARE OF THE SIGNIFICANCE WHICH THE INLAND FISHERY HAS IN SOME JURISDICTIONS.

IN THE DISCUSSIONS OF OUR MINISTERS, THE SUBJECTS OF AQUACULTURE, MARINE PLANTS AND THE FISHERY FOR SEDENTARY SPECIES WERE DISCUSSED TOGETHER. IT WOULD APPEAR THAT THE FEDERAL GOVERNMENT IS PREPARED TO RECOGNIZE THE ESSENTIALLY LOCAL CHARACTER OF THESE FISHERIES AND TO ACKNOWLEDGE THE PRIORITY OF EXCLUSIVE PROVINCIAL JURISDICTION OVER MANY ASPECTS OF THIS QUESTION. HOWEVER, THERE REMAINS A BASIC AREA OF DISAGREEMENT REGARDING THE EXTENT OF JURISDICTION WHICH THE FEDERAL GOVERNMENT WISHES TO RESERVE TO ITSELF OVER THE FISHERY FOR SPECIES, SUCH AS SALMON, IN INLAND WATERS.

IN THIS REGARD IT IS MY VIEW THAT FEDERAL JURISDICTION SHOULD EXTEND ONLY SO FAR AS IT IS NECESSARY TO PRESERVE AND CONSERVE THOSE FISH STOCKS IN A HEALTHY STATE. THAT IS TO SAY, MR. CHAIRMAN, IT SHOULD EXTEND ONLY TO THE DETERMINATION OF THE VOLUME OR THE NUMBER OF FISH WHICH CAN BE REMOVED BY THE FISHERY IN A GIVEN YEAR.

IN ADDRESSING THIS QUESTION THE FEDERAL GOVERNMENT HAS ALSO INDICATED THAT IT WISHES TO RETAIN JURISDICTION REGARDING THE PROTECTION OF FISH HABITAT. WHILE THIS CONCERN IS A LEGITIMATE MATTER, WE DO NOT BELIEVE THAT THE FEDERAL GOVERNMENT'S AUTHORITY IN THIS AREA SHOULD BE SO BROAD OR SO PERVASIVE THAT, IN THE NAME OF HABITAT PROTECTION, IT EXTENDS ITS JURISDICTION SO AS TO EFFECTIVELY

CONTROL THE USE OF THE WATER RESOURCES OF OUR PROVINCE.

UNDER THE HEADING OF INLAND FISHERIES, THE FEDERAL GOVERNMENT HAS ALSO RAISED THE QUESTION OF PROVIDING FOR NATIVE PEOPLES FISHERIES. IT IS MY BELIEF THAT THE WHOLE QUESTION OF NATIVE PEOPLES' RIGHTS AND ENTITLEMENTS WITHIN THE CANADIAN COMMUNITY MUST BE CONSIDERED TOGETHER. I DO NOT BELIEVE IT WOULD BE APPROPRIATE TO ADDRESS THE QUESTION OF PROTECTING THESE RIGHTS SOLELY WITH REFERENCE TO INLAND FISHERIES. INDEED, IT IS MY UNDERSTANDING THAT THE NATIVE PEOPLES OF CANADA CONSIDER THEIR FISHERY RIGHTS TO EXTEND BEYOND JUST INLAND FISHERIES. I DO BELIEVE IT WOULD BE APPROPRIATE IN DEALING WITH THIS ITEM TO MAKE EXPLICIT REFERENCE TO THE FACT THAT ANY NEW PROVISIONS IN AN AMENDMENT OF THE BRITISH NORTH AMERICA ACT DO NOT DIMINISH THE RIGHTS OF NATIVE PEOPLES IN INLAND FISHERIES.

OVERALL, MR. CHAIRMAN, THERE SEEMS TO HAVE BEEN SOME PROGRESS ON THE QUESTION OF INLAND FISHERIES. THE FEDERAL GOVERNMENT SEEMS WILLING TO ACKNOWLEDGE THE PRINCIPLE THAT MATTERS OF ESSENTIALLY LOCAL INTEREST SHOULD COME WITHIN THE AUTHORITY OF PROVINCIAL LEGISLATURES.

THIS IS A HALF STEP IN THE RIGHT DIRECTION. TO COMPLETE THE STEP, SIMILAR RECOGNITION BY A CONSTITUTIONAL PROVISION MUST BE GIVEN TO THE AUTHORITY OF PROVINCIAL LEGISLATURES OVER CERTAIN ASPECTS OF SEA COAST FISHERIES. IN THE DISCUSSIONS OF OUR MINISTERS, ALL PROVINCES EXCEPT ONE AGREED THAT THERE MUST, AT LEAST, BE CONCURRENT JURISDICTION IN THIS AREA.

I HAVE EXPLAINED WHY NEWFOUNDLAND FEELS THAT THIS IS NECESSARY AND I HAVE DESCRIBED THE ESSENTIAL CHARACTER OF THE CONSTITUTIONAL PROVISION WHICH WE BELIEVE IS NECESSARY. NO PROVINCE CAN QUIETLY ENDURE A SITUATION WHERE IT HAS NO LEGISLATIVE AUTHORITY OVER A RESOURCE, THE MANAGEMENT OF WHICH PREVADES EVERY ASPECT OF ITS SOCIETY AND DETERMINES THE SOCIAL, ECONOMIC AND CULTURAL VITALITY OF VIRTUALLY EVERY ONE OF ITS COMMUNITIES.

MR. CHAIRMAN, I BELIEVE THAT SIMPLE JUSTICE DEMANDS THAT PROVINCIAL LEGISLATURES HAVE A CONSTITUTIONALLY ASSURED ROLE IN FISHERY JURISDICTION.

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Government
Publications

NOTES FOR A
STATEMENT
ON
OFFSHORE RESOURCES
BY
THE HONOURABLE A. BRIAN PECKFORD
PREMIER OF NEWFOUNDLAND
AND
MINISTER FOR INTERGOVERNMENTAL AFFAIRS
AT THE
FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS
ON THE
CONSTITUTION

OTTAWA

SEPTEMBER 8-12, 1980

MR. CHAIRMAN, FROM THE BEGINNING OF OUR PARTICIPATION IN DISCUSSIONS ON CONSTITUTIONAL CHANGE, NEWFOUNDLAND HAS BEEN GUIDED BY OUR BELIEF THAT, AS A MATTER OF PRINCIPLE, THE CANADIAN CONSTITUTION MUST REFLECT THE JURIDICAL EQUALITY OF PROVINCES AND THE EQUALITY OF OPPORTUNITY FOR THEM TO DEVELOP THEIR SOCIETIES.

STARTING FROM THIS PRINCIPLE, IT FOLLOWS NATURALLY THAT THE RESOURCES OF ALL PROVINCES REGARDLESS OF WHETHER THESE RESOURCES ARE LAND OR FORESTS, MINERALS OR WATER POWER; REGARDLESS OF WHETHER THEY EXIST IN MOUNTAINS OR VALLEYS, ON THE SURFACE OR BENEATH IT, ARE COVERED BY AIR OR WATER; MUST BE ACCORDED THE SAME CONSTITUTIONAL TREATMENT. THIS MEANS VERY SIMPLY THAT THE LEGISLATIVE COMPETENCE AND THE ATTENDANT PROPRIETARY RIGHTS TO THOSE RESOURCES MUST BE THE SAME FOR ALL RESOURCES OF THE SAME KIND REGARDLESS OF PROVINCE.

TO SUGGEST ANY OTHER APPROACH IS TO SUGGEST THERE ARE DIFFERENT CLASSES OF PROVINCES, SOME OF WHICH ARE MORE LEGITIMATE THAN OTHERS. IT SUGGESTS THAT SOME PROVINCES HAVE THE RIGHT TO ASPIRE TO IMPROVING THEIR ECONOMIC CONDITION AND TO RISE ABOVE THEIR PRESENT POSITION ON THE HIERARCHY OF QUALITY OF SERVICE TO THEIR CITIZENS WHILE OTHERS DO NOT. IT ALSO SUGGESTS THAT SOME PROVINCES ARE TO BE IRREVOCABLY POOR AND CAN NEVER BECOME CONTRIBUTORS TO THE PROCESS OF SHARING WHICH UNIQUELY CHARACTERIZES THE CANADIAN FEDERATION.

MR. CHAIRMAN, NO PROVINCE SUBSCRIBES TO THAT VIEW AND I AM CONFIDENT THAT THE NOTION IS EQUALLY DISTASTEFUL TO THE FEDERAL GOVERNMENT.

THE IMPORTANCE TO NEWFOUNDLAND AND THE OTHER COASTAL PROVINCES OF HAVING OFFSHORE RESOURCES TREATED EQUALLY IN CONSTITUTIONAL TERMS WITH ONSHORE RESOURCES CANNOT BE OVERSTRESSED. IF THIS IS NOT ACHIEVED, THEN A PROVINCE SUCH AS NEWFOUNDLAND, WHERE WATER COVERS A LARGE PERCENTAGE OF ITS RESOURCES, CAN NEVER ATTAIN EQUALITY WITH THOSE PROVINCES WHERE MOST OF THE RESOURCES ARE ON LAND. AS A RESULT, CANADA WOULD THEN BE COMPRISED OF A STRONG FEDERAL GOVERNMENT, A MAJORITY OF STRONG PROVINCES AND A MINORITY OF WEAK PROVINCES.

IT IS EVIDENT FROM THE REVIEW OF CANADIAN HISTORY THAT THE PRINCIPLE OF EQUALITY OF CONSTITUTIONAL TREATMENT WITH RESPECT TO RESOURCES IS CONSISTENT WITH CANADIAN CONSTITUTIONAL PRACTICE:

1. IN 1867, WHEN THE BRITISH NORTH AMERICA ACT WAS ENACTED, IT WAS EXPLICITLY STATED THAT PROVINCES SHOULD OWN AND CONTROL ALL THEIR RESOURCES AND RECEIVE ANY RENTS OR ROYALTIES RELATING TO THEIR DEVELOPMENT AND EXPLOITATION.
2. IN 1912, THE CONSTITUTION WAS AMENDED TO VASTLY INCREASE THE SIZE OF QUEBEC, ONTARIO AND MANITOBA BY PASSING OVER TO THEM OWNERSHIP OF THE NORTHLANDS AND ALL THE RESOURCES CONTAINED IN THEM. FOR EXAMPLE, IN 1867 QUEBEC WAS 193,355 SQUARE MILES IN SIZE. SINCE THAT TIME, TRANSFERS OF TERRITORY THROUGH CONSTITUTIONAL AMENDMENT HAVE INCREASED ITS SIZE SO THAT TODAY IT COVERS AN AREA OF 594,860 SQUARE MILES.

3. In 1930, all the resources contained in Alberta, Saskatchewan and Manitoba were transferred to them by constitutional amendment. The explicit intent of this amendment was to make these provinces equal to the other existing provinces. It is stated in the amendment to the British North America Act, 1930, that "it is desirable that the Province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources".

It is clear from these examples that a fundamental aspect of Confederation is that each province should control its natural resources and that all provinces should be treated equally in this respect. This was the situation in 1867 and subsequent constitutional practice has confirmed and strengthened that concept. These changes have not weakened Canada; rather they have strengthened it. Strong provinces make a viable nation.

Mr. Chairman, the Government of Newfoundland has consistently asserted its ownership of the mineral resources of its continental shelf. This assertion is founded on the fact that ownership of these resources resided with the Dominion of Newfoundland before Confederation with the Dominion of Canada, and was not alienated from Newfoundland in that process.

The confirmation of Newfoundland's rights regarding the continental shelf during the current constitutional

PROCESS IS ESSENTIAL IF THE FUNDAMENTAL PRINCIPLES OF BALANCED FEDERALISM AND THE EQUALITY OF PROVINCES AND PEOPLE ARE TO BE ATTAINED.

THE DIFFERENCE OF OPINION DIVIDING THE PROVINCES AND THE FEDERAL GOVERNMENT ON QUESTIONS RELATING TO OFFSHORE RESOURCES CAN MOST APPROPRIATELY BE RESOLVED BY THE EXERCISE OF POLITICAL WILL BASED ON PAST CONSTITUTIONAL PRACTICE.

THERE IS NO REASON IN LOGIC OR IN EQUITY WHY NEWFOUNDLAND'S OFFSHORE MINERAL RIGHTS SHOULD BE QUESTIONED BECAUSE THE SAME RESOURCES WHICH, IN THE CASE OF SOME OTHER PROVINCES ARE LOCATED ON LAND, ARE, IN NEWFOUNDLAND'S CASE, LOCATED ON THE CONTINENTAL SHELF.

IT SHOULD BE RECALLED THAT ONTARIO, SINCE CONFEDERATION, HAS OWNED AND CONTROLLED THE UNDERWATER RESOURCES OF THE GREAT LAKES. IN FACT, THE WORLD'S FIRST OFFSHORE WELL WAS DRILLED ON THE CANADIAN SIDE OF LAKE ERIE IN 1913 AND PRODUCTION OF NATURAL GAS HAS CONTINUED TO THE PRESENT. ONTARIO'S PROPRIETARY AND LEGISLATIVE RIGHTS WITH RESPECT TO THE RESOURCES OF THE LAKEBEDS HAVE NEVER BEEN QUESTIONED.

IT SHOULD BE REMEMBERED AS WELL THAT THE GREAT LAKES ARE INTERNATIONAL WATERWAYS. THE FACTS OF PROVINCIAL OWNERSHIP ON THE ONE HAND AND THE FEDERAL EXERCISE OF JURISDICTION OVER THE INTERNATIONAL ASPECTS OF THESE WATERWAYS ON THE OTHER HAND HAVE NEVER COME IN CONFLICT. SURELY, THE FACT THAT THE GREAT LAKES ARE INTERNATIONAL BODIES OF FRESH WATER, WHILE THE WATER COVERING THE MINERAL RESOURCE OF NEWFOUNDLAND'S CONTINENTAL SHELF

AND THAT OF THE OTHER COASTAL PROVINCES IS SALT, SHOULD NOT DETRACT FROM EQUALITY OF TREATMENT.

I WANT TO EMPHASIZE, MR. CHAIRMAN, THAT NEWFOUNDLAND SEEKS NOTHING MORE THAN EQUALITY OF TREATMENT WITH RESPECT TO THESE RESOURCES. WE FULLY ACCEPT THAT THE NORMAL LEGISLATIVE JURISDICTION AND COMPETENCE OF THE FEDERAL GOVERNMENT WOULD APPLY TO THESE RESOURCES. WE ARE NOT SEEKING TO REDUCE THE NORMAL REVENUE RAISING POWERS OF THE FEDERAL GOVERNMENT THROUGH SUCH MEASURES AS CORPORATE AND PERSONAL INCOME TAXES AND CUSTOMS AND EXCISE DUTIES. NEITHER ARE WE SEEKING TO IMPAIR THE ABILITY OF THE FEDERAL GOVERNMENT TO CARRY OUT ITS RESPONSIBILITIES IN SUCH FIELDS AS SHIPPING AND NAVIGATION, NATIONAL DEFENCE, PROTECTION OF THE ENVIRONMENT AND EXTERNAL AFFAIRS.

BUT, MR. CHAIRMAN, IT MUST BE RECOGNIZED THAT IT IS THE ADJACENT PROVINCES WHICH WILL EXPERIENCE ALL OF THE ADVERSE IMPACT WHICH ATTENDS OFFSHORE RESOURCE DEVELOPMENT. IT IS CRITICALLY IMPORTANT, THEREFORE, THAT THESE PROVINCES HAVE THE LEGISLATIVE AUTHORITY TO MANAGE SUCH DEVELOPMENT. THIS AUTHORITY CAN ONLY DERIVE FROM THE RIGHTS OF OWNERSHIP. NO DISTANT GOVERNMENT, UNTOUCHED BY EVENTS, REGARDLESS OF ITS BENEVOLENCE OR GOOD INTENTIONS CAN ADEQUATELY PERFORM THIS FUNCTION.

THE FEDERAL GOVERNMENT HAS PROPOSED A REGIME OF ADMINISTRATIVE ARRANGEMENTS AS THE ANSWER TO THIS QUESTION. THIS SUGGESTION, OF ITSELF, IS AN ADMISSION THAT THE COASTAL PROVINCES HAVE A SPECIAL INTEREST IN THE MANAGEMENT OF THESE RESOURCES BUT IT DENIES TO THOSE PROVINCES THE ESSENTIAL REGULATORY POWERS WHICH DERIVE ONLY FROM OWNERSHIP.

THE FEDERAL GOVERNMENT HAS ALSO SUGGESTED THAT COASTAL PROVINCES SHOULD GET 100 PERCENT OF THE REVENUES ACCRUING FROM OFFSHORE RESOURCES, BUT ONLY UNTIL THEY BECOME "HAVE" PROVINCES.

AT FIRST GLANCE, THIS MIGHT APPEAR TO BE A GENEROUS GESTURE BUT IT IS TERRIBLY MISLEADING. TO BEGIN WITH, EVEN ON LAND NO PROVINCE REALIZES 100 PERCENT OF THE REVENUE. A LARGE PORTION GOES TO THE OIL COMPANIES AND A SIGNIFICANT PORTION GOES TO THE FEDERAL GOVERNMENT THROUGH TAXES OF VARIOUS KINDS. LESS THAN HALF OF THE TOTAL REVENUE REMAINS FOR THE PROVINCIAL GOVERNMENT. THE OFFSHORE WOULD BE NO DIFFERENT.

FURTHERMORE, THE FEDERAL PROPOSAL WOULD SEE THIS SHARING CONTINUE ONLY UNTIL GOVERNMENT REVENUES REACH THE NATIONAL AVERAGE, THAT BEING THE CONVENTIONAL DEFINITION OF "HAVE" PROVINCES. THIS IS HARDLY AN ADEQUATE RESPONSE TO THE CITIZENS OF A PROVINCE WHO SEE THEIR FELLOW CANADIANS WITH AVERAGE EARNED INCOMES TWICE THEIR OWN.

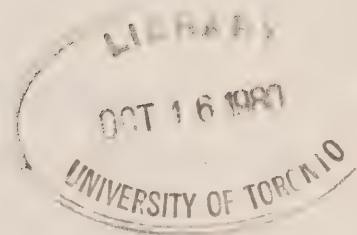
THE FEDERAL PROPOSAL IS DEFICIENT IN OTHER AREAS BUT EVEN IF IT WERE IMPROVED IN THESE RESPECTS, IT WOULD STILL BE UNACCEPTABLE BECAUSE IT STEMS FROM A FUNDAMENTAL INEQUALITY IN THE TREATMENT OF PROVINCES.

NO SOLUTION IS POSSIBLE TO THE DIFFERENCES BETWEEN THE TEN PROVINCES AND THE FEDERAL GOVERNMENT ON THIS ISSUE SHORT OF A CONSTITUTIONAL AMENDMENT CONFIRMING OWNERSHIP RIGHTS TO THE OFFSHORE RESOURCES IN THE PROVINCES TO WHICH THE CONTINENTAL SHELF APPURTAINS.

SHOULD THE OWNERSHIP RIGHTS OF COASTAL PROVINCES REGARDING
OFFSHORE RESOURCES NOT BE CONFIRMED, WE WOULD BE ENSHRINING
INEQUALITY IN THE CANADIAN CONSTITUTION AND THIS IS A
TOTALLY UNACCEPTABLE BASIS UPON WHICH TO ENTER OUR
SECOND CENTURY AS A NATION.

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NOTES
FOR AN OPENING STATEMENT
AT THE
FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION
BY
STERLING LYON
PREMIER OF MANITOBA



8 SEPTEMBER 1980.

NOTES ONLY - CHECK AGAINST DELIVERY.

PRIME MINISTER:

I WOULD LIKE TO BEGIN BY THANKING ALL THOSE WHO HAVE BEEN INVOLVED IN THE ONGOING CONSTITUTIONAL DISCUSSIONS THAT HAVE TAKEN PLACE OVER THE SUMMER.

THEIRS HAS NOT BEEN AN EASY TASK. IN A CLIMATE OF PRE-OCCUPATION WITH THOSE THINGS THAT DIVIDE THE GOVERNMENTS GATHERED HERE, THEY HAVE NOT ALWAYS RECEIVED THE CREDIT THEY DESERVE FOR THE PROGRESS THEY HAVE MADE.

IF WE ARE TO CONTINUE TO MAKE PROGRESS AT THIS CONFERENCE - AS I BELIEVE WE CAN - WE MUST MAKE A REALISTIC AND GOOD FAITH EFFORT TO GIVE PRIMACY IN OUR DISCUSSIONS TO THOSE AREAS WHERE WE HAVE A CHANCE OF SIGNIFICANT AGREEMENT.

IT WILL CALL FOR ALL OF US TO HAVE THE MATURITY TO PUT ASIDE, FOR THE MOMENT, MATTERS UPON WHICH NO EARLY AGREEMENT IS POSSIBLE. IN SOME CASES, THAT MAY BE PAINFUL, BECAUSE SOME OF THE GOVERNMENTS HERE FEEL STRONGLY ABOUT MATTERS WHICH ARE NOT LIKELY TO BE RESOLVED AT THIS MEETING.

BUT ONLY IN THIS WAY CAN WE ACHIEVE REAL OR SIGNIFICANT AGREEMENTS. ONLY IN THIS WAY CAN WE PUT BEFORE THE PEOPLE OF CANADA, AT THE END OF THIS CONFERENCE, TANGIBLE PROOF THAT THE LONG PROCESS OF CONSTITUTIONAL RENEWAL IS FINALLY BEARING FRUIT.

ONLY IN THIS WAY CAN THE PROCESS OF CONSTITUTIONAL RENEWAL BE - AS IT SHOULD AND MUST BE IF WE ARE TO SERVE CANADA RATHER THAN OUR OWN PRIVATE VIEWS OF WHAT IS CONSTITUTIONALLY DESIRABLE - A POSITIVE AND A UNIFYING PROCESS.

NO GOVERNMENT AT THIS TABLE NEED ATTEMPT TO DICTATE ON ALL MATTERS TO ACHIEVE PROGRESS. WE HAVE A REAL OPPORTUNITY TO MAKE SIGNIFICANT PROGRESS BY AGREEMENT.

WE CAN DO THAT IF WE BEGIN BY UNDERSTANDING THAT IT IS NATURAL, IN A COUNTRY AS DIVERSE AS CANADA, AND AMONG GOVERNMENTS WITH SUCH DIVERSE AND WIDE-RANGING CONCERNS AS THOSE REPRESENTED AT THIS TABLE, THAT THERE WILL BE DISAGREEMENTS - IN GOOD FAITH.

WE CAN MAKE PROGRESS HERE IF WE BEGIN BY UNDERSTANDING THAT FAILURE TO AGREE ON ANY MATTER IS NOT - AND CANNOT HONESTLY BE REPRESENTED TO BE - EVIDENCE THAT ANY GOVERNMENT HERE IS SOMEHOW LESS "CANADIAN" THAN ANY OTHER, OF THAT ANY OF US AROUND THIS TABLE ARE LESS COMMITTED TO THE WELFARE, THE INTERESTS, AND THE PROSPERITY OF ALL CANADIANS.

WE HAVE A CHANCE TO WRITE A POSITIVE CHAPTER IN CANADIAN HISTORY AT THIS CONFERENCE - IF WE CAN AGREE TO COURT AGREEMENT RATHER THAN CONFRONTATION, AND TO STRIVE FOR CONSENSUS, RATHER THAN FOR VICTORIES FOR ANY CONTENTIOUS POINT OF VIEW.

I WOULD HOPE, AS WELL, THAT AT THIS CONFERENCE WE COULD DEMONSTRATE OUR BROAD CONCERNS FOR THE WHOLE REALM OF CHALLENGES FACING CANADIANS AND THEIR GOVERNMENTS AS WE BEGIN THE 1980's.

IT IS IRONIC THAT, IN THE PROCESS OF DISCUSSING OUR CONSTITUTION - A PROCESS THAT TOUCHES ON EVERY ASPECT OF OUR NATIONAL LIFE - WE MAY SOMETIMES APPEAR TO BE UNCONCERNED ABOUT OTHER CRITICAL MATTERS FACING US AND ALL CANADIANS.

THERE ARE THOUSANDS OF UNEMPLOYED IN THE AUTO INDUSTRY. OUR ECONOMY APPEARS TO BE PERFORMING MORE POORLY THIS YEAR THAN AT ANY TIME IN A QUARTER CENTURY. EVEN OUR STRONGEST MANUFACTURING INDUSTRIES IN OUR INDUSTRIAL HEART-LAND OF CENTRAL CANADA FACE A SERIES OF WRENCHING ADJUSTMENTS TO INCREASED INTERNATIONAL COMPETITION.

CAN WE, AS THE ELEVEN HEADS OF CANADA'S ELEVEN GOVERNMENTS, APPEAR TO BE TELLING CANADIANS NOT TO BOTHER US WITH THOSE CONCERNS THIS WEEK, BECAUSE THIS WEEK WE ARE NOT IN THE ECONOMIC BUSINESS, WE ARE IN THE CONSTITUTIONAL BUSINESS?

IT IS UP TO GOVERNMENTS TO BRING OUR CONSTITUTION TO LIFE WITH ACTIONS CONSISTENT WITH THE ASPIRATIONS AND CONCERNS OF CANADIANS. BUT I AM CONCERNED THAT, THROUGHOUT THIS SET OF CONSTITUTIONAL DISCUSSIONS, WE HAVE NOT ALWAYS BEEN SEEN TO BE DOING THAT.

THE IRONY IS THAT, IN LOOKING AT OUR CONSTITUTION, WE HAVE IDENTIFIED A REAL OPPORTUNITY, AND A REAL NEED, FOR MORE EFFECTIVE ECONOMIC CO-OPERATION.

I AM SPEAKING, OF COURSE, OF THE DISCUSSIONS THAT HAVE TAKEN PLACE WITH RESPECT TO POWERS OVER THE ECONOMY. THOSE DISCUSSIONS HAVE LED US TO LOOK AT THE FUNCTIONING OF OUR ECONOMIC UNION IN A WAY WE HAVE NOT DONE IN THE PAST.

IT IS PROPER THAT YOUR GOVERNMENT HAS RAISED THIS AND RELATED ECONOMIC MATTERS IN THE COURSE OF OUR CONSTITUTIONAL DISCUSSIONS. ONE UNDENIED ROLE FOR THE FEDERAL GOVERNMENT IS TO PROVIDE LEADERSHIP IN ACHIEVING MORE EFFECTIVE CO-OPERATION AMONG THE PARTS OF THIS COUNTRY.

AND THE PROVINCES HAVE RESPONDED TO YOUR INITIATIVE, PRIME MINISTER, NOT SIMPLY WITH CONSTITUTIONAL ARGUMENTS, AS IMPORTANT AS WE AGREE SUCH ARGUMENTS MUST BE.

WE HAVE RESPONDED WITH A UNANIMOUS AGREEMENT, REACHED AT THE TWENTY-FIRST ANNUAL PREMIERS' CONFERENCE IN WINNIPEG LATE LAST MONTH, THAT FEDERAL AND PROVINCIAL MINISTERS OF FINANCE AND OF ECONOMIC DEVELOPMENT SHOULD MEET TO EXAMINE WAYS IN WHICH WE CAN WORK MORE EFFECTIVELY TOGETHER IN ECONOMIC MATTERS.

WE HAVE AGREED SPECIFICALLY TO ADDRESS THE AREAS OF PUBLIC PROCUREMENT, CAPITAL PROJECTS, AND RESEARCH AND DEVELOPMENT - ALL AREAS IN WHICH ALL ELEVEN CANADIAN GOVERNMENTS ARE ACTIVE, AND ALL AREAS IN WHICH, BY WORKING TOGETHER, WE CAN BETTER SERVE OUR SHARED AND OUR SEVERAL INTERESTS.

I BELIEVE THESE MEETINGS CAN RESULT IN REAL AND TANGIBLE BENEFITS TO CANADIANS. FOR EXAMPLE, SPEAKING FOR MANITOBA, WE COULD PUT BEFORE THE FIRST MEETING OF THOSE MINISTERS THE MATTER OF OUR NEXT HYDRO-ELECTRIC GENERATING STATION, WHICH WE HOPE TO BUILD IN THE NEAR FUTURE ON THE NELSON RIVER SYSTEM IN NORTHERN MANITOBA.

WE WILL BE INTERESTED IN THE HELP AND CO-OPERATION OF THE OTHER PROVINCIAL GOVERNMENTS, AND IN THE LEADERSHIP AND SUPPORT OF YOUR GOVERNMENT, AS WE ATTEMPT TO DEFINE WAYS IN WHICH THAT DEVELOPMENT CAN BE USED TO FURTHER THE TOTAL DEVELOPMENT OF CANADA.

WE WOULD HOPE THAT, THROUGH THE CO-OPERATION AND SUPPORT OF OTHER GOVERNMENTS, THE GREATEST POSSIBLE PORTION OF THAT SPENDING SHOULD RESULT IN ORDERS FOR CANADIAN MANUFACTURERS. IF A DECISION TO BUY EQUIPMENT IN CANADA INVOLVES SIGNIFICANT COST PENALTIES, THEN WE WILL BE ASKING FOR THE CO-OPERATION OF OTHER GOVERNMENTS IN OFF-SETTING THAT PENALTY IN A WAY THAT CONTRIBUTES TO OUR OWN DEVELOPMENT AND TO THE DIVERSIFICATION OF THE ECONOMIES OF OUR REGION.

THE PREMIERS OF ONTARIO AND QUEBEC, WHERE THE BULK OF CANADA'S HEAVY ELECTRICAL MANUFACTURING INDUSTRY IS LOCATED, CAN TELL YOU THE SIGNIFICANCE - IN TERMS OF NEW JOBS AND INCREASED COMPETITIVE ABILITY FOR THEIR INDUSTRIES - THAT SUCCESS IN THIS KIND OF A CO-OPERATIVE EFFORT CAN HAVE.

AND MY COLLEAGUES IN WESTERN CANADA CAN TELL YOU OF THE HOPES AND EXPECTATIONS WE HAVE THAT SUCH CO-OPERATION CAN CONTRIBUTE TO OUR OWN ECONOMIC GROWTH AND DEVELOPMENT.

THE POTENTIAL FOR CO-OPERATION TO IMPROVE THE FUNCTIONING OF OUR ECONOMIC UNION IS THERE, PRIME MINISTER, IN THE GOOD WILL AND THE DETERMINATION TO WORK TOGETHER THAT EXISTS IN EVERY PROVINCIAL GOVERNMENT.

WHAT HAS THAT TO DO WITH THE CONSTITUTION AND WITH THE SUBJECT OF OUR MEETINGS HERE THIS WEEK?

FIRST - IT IS A DIRECT AND SENSIBLE RESPONSE TO THE CONCERNS THAT WE HAVE JOINTLY IDENTIFIED THROUGH THESE CONSTITUTIONAL DISCUSSIONS. IT DEMONSTRATES THAT THESE DISCUSSIONS ARE NOT TAKING PLACE IN AN AIR-TIGHT COMPARTMENT, ISOLATED FROM THE DAY TO DAY PROBLEMS OF CANADIANS.

SECONDLY - IN MY VIEW IT ADDS TO THE KIND OF AGREEMENT WE SHOULD BE STRIVING FOR THROUGHOUT THESE DISCUSSIONS - AN AGREEMENT, ARISING OUT OF THE KIND OF CRITICAL LOOK WE HAVE ALL BEEN TAKING AT THE WAY OUR COUNTRY WORKS.

NOT ALL OF THE THINGS WE DISCUSS HERE CALL FOR CONSTITUTIONAL AMENDMENT - AT LEAST, NOT YET. AND I WOULD SUGGEST TO YOU THAT THIS KIND OF POSITIVE AND ENTHUSIASTIC ECONOMIC CO-OPERATION TO MAKE SURE THAT ALL OF CANADA BENEFITS FROM THE TOTAL ECONOMIC STRENGTH OF CANADA IS MORE FRUITFUL AT THIS STAGE THAN ANY EFFORT TO RE-DIVIDE THE POWERS OVER OUR ECONOMY AS SPELLED OUT IN OUR CONSTITUTION.

WE CAN AGREE, PRIME MINISTER, ON A RANGE OF MEASURES THAT SERVE CANADA WELL.

SOME WILL BE CONSTITUTIONAL IN NATURE: WE ARE AT LEAST IN RANGE OF AN AGREEMENT ON SUCH KEY ITEMS AS EQUALIZATION, COMMUNICATIONS, PATRIATION, THE SUPREME COURT AND AN AMENDING FORMULA.

OTHER AGREEMENTS, LIKE THE ONE I HOPE WE CAN ACHIEVE WITH RESPECT TO CO-OPERATION IN EFFORTS TO MAKE OUR ECONOMIC UNION FUNCTION MORE EFFECTIVELY, WILL NOT, IN THE FIRST INSTANCE, GIVE RISE TO CONSTITUTIONAL CHANGE.

BUT THEY WILL GIVE RISE TO ADDITIONAL OPPORTUNITIES FOR CANADIANS TO FIND EMPLOYMENT AND TO BUILD BETTER LIVES FOR THEMSELVES. AND SURELY, ULTIMATELY, THAT IS WHAT WE DISCUSSING HERE.

WE ARE NOT TALKING ABOUT A CONSTITUTION: WE ARE TALKING ABOUT A COUNTRY. IT IS A COUNTRY THAT WE ALL LOVE. IT IS A COUNTRY AS DIVERSE AS THE PEOPLE SITTING AROUND THIS TABLE.

AND IT IS A COUNTRY THAT EXPECTS US TO MAKE REAL PROGRESS HERE, IN THESE DISCUSSIONS.

AND I BELIEVE THAT THE UNEMPLOYED AUTO WORKER IN WINDSOR, THE DROUGHT STRICKEN FARMER IN MANITOBA, THOSE IN NOVA SCOTIA WHO ARE SEEING THEIR ABILITY TO MAINTAIN THEIR INDUSTRIES ATTACKED BY ELECTRICITY COSTS, AND ALL THOSE OTHERS IN CANADA WHO FACE REAL PROBLEMS TODAY, DEMAND BOTH THOSE CONSTITUTIONAL AGREEMENTS THAT ARE POSSIBLE, AND SENSIBLE AND PRACTICAL CO-OPERATIVE ACTION AMONG ALL OUR GOVERNMENTS TO ADDRESS THESE VERY REAL PROBLEMS.

WE CANNOT AFFORD TO EXHAUST THE PATIENCE OF CANADIANS WITH A PROCESS THAT APPEARS FRUITLESS, OR THAT APPEARS TO BE INTERFERING WITH OUR ABILITY TO RESPOND TO THE REAL AND IMMEDIATE CONCERNS THAT EXIST ACROSS THIS COUNTRY.

WE WILL NOT, AT THIS MEETING, SUCCEED IN RESOLVING ALL OF THE MOST DIFFICULT QUESTIONS BEFORE US. BUT WE CAN MAKE IMPORTANT PROGRESS - ON CONSTITUTIONAL AND ON OTHER MATTERS. THE PROGRESS IS THERE TO BE MADE. AND IF WE DO CONCENTRATE ON ACHIEVING THOSE THINGS WHICH ARE ACHIEVABLE HERE THIS WEEK, WE WILL HAVE LAID A HEALTHY FOUNDATION FOR FUTURE EFFORTS TO ACHIEVE A WIDER AGREEMENT.

WE HAVE SIGNIFICANT DIFFERENCES ON PRINCIPLE, FOR EXAMPLE, ON THE MATTER OF THE ENTRENCHMENT OF A CHARTER OF RIGHTS. BUT WE HAVE, AS WELL, SIGNIFICANT OPPORTUNITIES TO AGREE.

MY CHOICE, AND I BELIEVE, THE CHOICE OF THE OTHER PREMIERS, WILL BE NOT TO WASTE THOSE OPPORTUNITIES.

WE BEGAN THIS SERIES OF DISCUSSIONS WITH TWELVE ITEMS. I AM INTERESTED IN SEEING HOW MANY WE CAN NOW AGREE UPON, NOT IN CONFRONTATIONS ABOUT THE ONES THAT STILL DIVIDE US.

THAT WILL BE OUR POSITION THROUGHOUT THIS CONFERENCE. WE ARE NOT HERE TO SACRIFICE THE AGREEMENTS THAT ARE POSSIBLE - THE SIGNIFICANT AGREEMENTS THAT ARE POSSIBLE - ON THE ALTAR OF OUR REMAINING DISAGREEMENTS.

PRIME MINISTER, AS YOU KNOW, OUR PROVINCE OF MANITOBA HAS TRADITIONALLY BEEN A SUPPORTER OF A STRONG FEDERAL GOVERNMENT FOR CANADA. WE CONTINUE IN THAT TRADITION.

IN PRACTICAL TERMS, I BELIEVE OUR PROVINCE HAS FEWER OF WHAT YOUR MINISTERS HAVE DESCRIBED AS "BARRIERS TO TRADE" THAN VIRTUALLY ANY OTHER PROVINCE IN CANADA.

WE HAVE ALWAYS PERCEIVED OURSELVES TO BE CANADIANS FIRST, AND MANITOBANS SECOND.

BUT WE ARE STILL MANITOBANS. WE DO STILL HAVE OUR OWN CONCERNS, OUR OWN VIEWPOINTS. WE CONTINUE TO BE PREPARED TO WORK TO HARMONIZE THOSE CONCERNS AND VIEWPOINTS WITH THOSE OF OTHERS ACROSS CANADA.

IN THAT SPIRIT, WE ARE HERE TO RESOLVE THOSE DISAGREEMENTS THAT CAN BE RESOLVED, AND TO AGREE ON AN ONGOING EFFORT TO RESOLVE THOSE WHOSE RESOLUTION IS NOT YET CLEAR.

- THAT IS WHAT OUR PEOPLE EXPECT OF US. I BELIEVE IT IS WHAT THE PEOPLE OF CANADA EXPECT FROM US ALL.

I HOPE, AND I BELIEVE, THAT WE CAN WORK TOGETHER OVER THESE NEXT FEW DAYS, TO WRITE A POSITIVE AND A UNIFYING CHAPTER IN OUR HISTORY AS A NATION.

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Publications



OPENING REMARKS

OF

HONOURABLE W. R. BENNETT

PREMIER OF BRITISH COLUMBIA

(CHECK AGAINST DELIVERY)

OTTAWA,
SEPTEMBER 8, 1980

MR. CHAIRMAN, FELLOW PREMIERS, I COME TO THIS TABLE AS A CANADIAN AND AS A BRITISH COLUMBIAN, TO PARTICIPATE WITH YOU IN THE REALIZATION OF A NEW AND STRONGER CANADA.

IT IS IMPORTANT THAT ALL OF US HERE TODAY UNDERSTAND THAT THE UNITY AND STRENGTH OF OUR COUNTRY LIES NOT IN THE WORD "CONSTITUTION" BUT IN THE STRENGTH, THE WILL AND THE DETERMINATION OF ALL CANADIANS TO WORK AND TO LIVE IN HARMONY TOGETHER.

IT IS WITHIN THIS CONTEXT THAT I WISH TO PUT FORWARD THE BRITISH COLUMBIA POINT OF VIEW.

THE JOB BEFORE US IS TO ESTABLISH NEW RULES AND CREATE NEW STRUCTURES TO ENABLE THE GOVERNMENTS OF OUR PEOPLE TO BETTER SERVE THE NEEDS AND ASPIRATIONS OF ALL CANADIANS. ONE OF THE PRINCIPAL REASONS WE ARE HERE TO PURSUE THESE GOALS IS BECAUSE THE ARRANGEMENTS OF OUR FEDERATION HAVE NOT PERMITTED US TO RECOGNIZE AND RESPOND TO THE LEGITIMATE CONCERNS OF ALL OF OUR PEOPLES.

AS FIRST MINISTERS, IT IS OUR TASK TO PREPARE CANADA AND ALL OF OUR PROVINCES FOR THE 21ST CENTURY. WE HAVE COME HERE WILLINGLY AND WITH OPTIMISM AT THIS CRITICAL TIME FOR OUR NATION AND FOR ITS REGIONS.

WE APPROACH OUR DELIBERATIONS NOT IN AN ADVERSARIAL TONE AS THOSE WHO WOULD SAY "BRITISH COLUMBIA IS UNIQUE AND DESERVING SPECIAL CONSIDERATION" BUT AS BRITISH COLUMBIANS WHO WANT A STRONG VOICE AT THE NATIONAL LEVEL. WE WANT THE

COMMITMENT THAT BRITISH COLUMBIANS BE RECOGNIZED AND HAVE A PROPER PLACE IN THE CENTRAL DECISION-MAKING PROCESS.

BUT OUR COMMITMENT TO A UNITED CANADA IS NOT AT ISSUE. WE ARE AND WE WANT TO REMAIN CANADIANS.

THE WESTERN PART OF THIS GREAT LAND ASKS FOR NOTHING MORE THAN A RECOGNITION OF ITS STRENGTH AND ITS CAPACITY TO CONTRIBUTE. WE ASK FOR THAT RECOGNITION AND UNDERSTANDING OF OUR CONTRIBUTION TO CANADIAN NATIONHOOD.

THERE ARE SOME IN OUR PROVINCE WHO WOULD REJECT THAT KIND OF COMMITMENT TO CONFEDERATION. THERE ARE THOSE WHO WOULD PREFER THAT WE NOT PARTICIPATE IN ANY SORT OF CONFERENCE OF THIS KIND. I REJECT THAT ATTITUDE. IT IS NOT ACCEPTABLE TO THE MAJORITY OF BRITISH COLUMBIANS.

OUR LACK OF RECOGNITION FROM CENTRAL CANADA MAY BE AN IRRITANT BUT IT IS NOT AN INSURMOUNTABLE DIFFICULTY.

IF ALL OF US ARE TO ACHIEVE AGREEMENT ON THE ISSUES ON WHICH WE ARE DIVIDED, EACH OF US MUST RESOLVE TO ACT IN A SPIRIT OF GOODWILL AND IN A CONCILIATORY MANNER. THOSE WE REPRESENT EXPECT AND ARE ENTITLED TO NOTHING LESS.

AND IN THIS RESPECT, I SPEAK BOTH FOR THE INTERESTS OF BRITISH COLUMBIA AND FOR THE INTERESTS OF CANADA. THE CONSTITUTIONAL PROPOSALS PUT FORWARD IN THE AUTUMN OF 1978 BY THE GOVERNMENT OF BRITISH COLUMBIA DID NOT REPRESENT ANY NARROW

SELF-INTERESTED PROVINCIALISM. RATHER, THEY REFLECTED A SERIOUS EFFORT BY US TO INTEGRATE THE PROVINCES AND PROVIDE THEM WITH AN EFFECTIVE VOICE IN THE INSTITUTIONS OF THE CENTRAL GOVERNMENT. OUR PURPOSE WAS BOTH TO MAKE THE OPERATIONS OF NATIONAL POLICY MORE SENSITIVE TO THE LEGITIMATE INTERESTS OF THE PROVINCES, AND THE COMMUNITIES THEY REPRESENT, AND ALSO TO MAKE THE PROVINCES MORE AWARE OF THE CANADA-WIDE CONSIDERATIONS WHICH PROPERLY ENTER INTO FEDERAL GOVERNMENT POLICY MAKING.

I AM NOT HERE TO DO BATTLE FOR BRITISH COLUMBIA AGAINST CANADA, BUT FOR CANADA. I AM HERE TO JOIN THE LEGITIMATE INTEREST OF BOTH THE PROVINCIAL AND NATIONAL COMMUNITIES, TO WHICH ALL OF US BELONG.

I TAKE IT FOR GRANTED THAT ALL MY COLLEAGUE PREMIERS ARE SIMILARLY MOTIVATED. I ALSO TAKE IT FOR GRANTED THAT THE PRIME MINISTER OF OUR COUNTRY DOES NOT VIEW HIS ROLE AS JUST A DEFENDER OF THE CENTRAL GOVERNMENT, BUT THAT AS A KEEN STUDENT OF FEDERALISM, HE RECOGNIZES THE ROLE OF THE PROVINCES OF THIS GREAT COUNTRY, RECOGNIZING THAT THEIR INTERESTS CANNOT BE OVERRIDDEN AS IF CANADA WAS A UNITARY STATE WITH ALL OF ITS POWER AT THE CENTRE.

CONSEQUENTLY, AS I AM NOT HERE TO DO BATTLE AGAINST OTTAWA, I ASSUME THE FEDERAL GOVERNMENT IS NOT HERE TO DO BATTLE AGAINST THE PROVINCES.

WE ALL MUST BE HERE IN THE HONEST SEARCH FOR COMPROMISE - FOR THAT SURELY IS THE ESSENCE OF THE DEMOCRATIC PROCESS, AND EVEN MORE SO OF THE DEMOCRATIC PROCESS IN A FEDERAL STATE.

OUR PRESENT CONSTITUTION HAS SERVED US WELL BUT IT IS NO LONGER ADEQUATE FOR OUR FULL DEVELOPMENT AS A NATION AND IT IS NO LONGER ADEQUATE FOR THE DEVELOPMENT OF BRITISH COLUMBIA AS A STRONG PART OF OUR NATIONAL FABRIC.

MY GOVERNMENT HAS WORKED TIRELESSLY TO FIND A BASIS FOR RENEWED FEDERALISM WHICH WOULD SATISFY THE NEEDS AND HOPES OF ALL OF OUR REGIONS. WE HAVE PUT FORWARD OUR VIEWS ON ECONOMIC STRATEGIES WHICH WOULD STRENGTHEN THE NATION'S WELL-BEING. WE HAVE PUT FORWARD COMPREHENSIVE CONSTITUTIONAL PROPOSALS THAT WOULD GIVE ALL THE REGIONS OF CANADA A FAIR AND EQUITABLE DEAL.

WITHOUT GOING INTO THE DETAIL OF OUR CONSTITUTIONAL PROPOSALS AT THIS TIME, LET ME JUST SAY THAT WE MUST MAKE CHANGES TO RECOGNIZE THAT WE ARE IN A FEDERAL SYSTEM, AND THAT NATIONAL POLICY-MAKING, ON ISSUES WHICH AFFECT THE PROVINCES, MUST NOT BE THE PRIVATE PRESERVE OF THE GOVERNMENT OF CANADA. IT IS A PROCESS WHICH MUST INVOLVE ALL OF OUR SENIOR GOVERNMENTS, AND OUR NATIONAL INSTITUTIONS MUST REFLECT THAT.

IN SHORT, WE IN BRITISH COLUMBIA DON'T WANT TO "OPT OUT" OF CANADA. ON THE CONTRARY, OUR GOAL IS TO "OPT IN", IN A NEW AND MORE MEANINGFUL WAY THAN HAS EVER BEEN THE CASE BEFORE.

IN CLOSING LET ME SAY THIS -- THE FUTURE OF THIS COUNTRY IS GREATER THAN THE GOALS OR PARTICULAR TIME-TABLES OF ANY OF US AROUND THIS TABLE. BY ALL MEANS WE SHOULD MAKE PROGRESS ON THOSE ISSUES ON WHICH WE CAN READILY AGREE. ANY AGREEMENT OF SUBSTANCE WOULD REPRESENT PROGRESS. HOWEVER, WE MUST NOT ALLOW OURSELVES TO BE FORCED INTO ANY UNREALISTIC TIME-TABLE, FOR AGREEMENTS REACHED UNDER THOSE SORTS OF PRESSURES WILL NOT LAST.

WE MUST NEVER FORGET THAT A CONSTITUTION IS JUST A FRAMEWORK IN WHICH GOVERNMENTS AND PEOPLE CONDUCT THEMSELVES, AND WE MUST NOT LOSE SIGHT OF THE SUBSTANCE - JOBS, INFLATION, SOCIAL BENEFITS TO OUR PEOPLE, SECURITY, FREEDOM, THE INSTITUTIONS OF OUR DEMOCRACY. ALL THESE ARE THE PRINCIPAL ISSUES THAT ALL CANADIANS ARE CONCERNED ABOUT.

FIRST, THE CONSTITUTION IS AN ACT OF ANOTHER LAND, THE BRITISH PARLIAMENT. WE HONOUR AND RESPECT THE HERITAGE, BUT WE HAVE LONG BEEN OF THE AGE AND MATURITY TO MANAGE OUR OWN AFFAIRS. ✓

SECOND, MANY OF OUR NATIONAL GOVERNMENT INSTITUTIONS ARE NOT PROPERLY REPRESENTING CROSS - COUNTRY INTERESTS WITH THE RESULT THAT MANY PEOPLE IN B.C. FEEL ALIENATED FROM THE FEDERAL GOVERNMENT. WE ARE CANADA'S THIRD MOST POPULOUS PROVINCE YET MANY BRITISH COLUMBIANS FEEL LEFT OUT WHEN NATIONAL GOVERNMENT DECISIONS ARE MADE. OUR JOBS, OUR INCOMES AND THE DEVELOPMENT OF OUR PROVINCE REQUIRES FEDERAL POLICIES IN SUPPORT OF OUR PROVINCE'S ASPIRATIONS. WE NEED ENERGY POLICIES, TRANSPORTATION POLICIES AND INDUSTRIAL POLICIES THAT WILL CREATE A STRONG BRITISH COLUMBIA AND A STRONG CANADA.

WE AGREE THAT CANADA IS MORE THAN THE SUM OF THE TEN PROVINCES AND THE TERRITORIES, BUT CANADIANS DO NOT LIVE IN A PLACE CALLED "FEDERAL". THEY LIVE IN P.E.I., IN QUEBEC, IN SASKATCHEWAN, IN BRITISH COLUMBIA. THAT IS WHY THE VOICES OF THE TEN PROVINCES MUST BE HEARD, LOUD AND CLEAR, IN THIS PROCESS OF AMENDING OUR CONSTITUTION, AND BARE UNILATERAL ACTION BY THE FEDERAL GOVERNMENT IS UNACCEPTABLE.

IF THE PRINCIPLE OF UNANIMITY FOR DECISION BY ALL TEN ADMINISTRATIONS IS TO BE THE PRESENT RULE AS IT HAS BEEN IN THE PAST, THEN CLEARLY GIVE AND TAKE MUST APPLY TO THE FEDERAL POSITION AS WELL AS TO THE PROVINCES. THERE MUST BE GENUINE COMPROMISE. THE DEALINGS MUST BE IN GOOD FAITH. ON A SUBSTANTIAL NUMBER OF AGENDA ITEMS TEN PROVINCES SHOULD BE ABLE TO DO EXACTLY THAT. IT IS OUR HOPE THAT IN THE NEXT FEW DAYS THE FEDERAL GOVERNMENT WILL SEE ITS WAY CLEAR TO MOVE CLOSER TO THE NATIONAL VIEW EXPRESSED BY THE TEN PROVINCES IN CONCERT, AND SO ACHIEVE THE UNANIMITY WE ALL MUST STRIVE FOR.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Notes for a
Statement by the Prime Minister of Canada
on Resource Ownership and Interprovincial Trade

Ottawa
September 8-12, 1980

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

Under our Constitution, the provinces have the responsibility of developing and conserving their natural resources, and the careful management of these resources brings benefits to the residents of each province and to all Canadians. These same resources, once they are taken from their original site, become commodities in trade. And, when these commodities move beyond the boundaries of the province that produces them, they become subject to the federal government's power under the Constitution to regulate interprovincial and international trade. This federal power is in the Constitution to ensure that Canadians may have the advantages of a single large market in Canada, within which a higher level of prosperity is possible. Various other powers of both orders of government also touch upon resources, particularly the powers of taxation.

Thus in Canada, as in most countries with a federal system, both the provinces and the federal government are able, through the exercise of their powers, to influence the way in which resources are developed and used, and to influence the way in which provincial residents and Canadians generally are able to share in the benefits. I believe that no one can dispute the fact that, under this complicated division of jurisdiction, we in Canada have derived enormous advantages from the natural resources we are fortunate to possess.

All governments, including the federal government, are agreed that changes are required in our constitutional provisions for resources. The question is, what changes would be best, and how far they should go. As I understand the situation, the provinces are making proposals along these lines:

- On ownership and management, all provinces want the new Constitution to provide clear recognition of provincial ownership, and of provincial jurisdiction over the development and management of non-renewable and forestry resources and electrical energy.
- On exports of resources from the producing provinces, seven provinces are in favour of giving provinces concurrent jurisdiction over exports to other countries, subject to federal paramountcy, and concurrent jurisdiction over shipments to other parts of Canada, subject to federal intervention only in cases of "compelling national interest". At least one province would place an even greater limitation on federal power to intervene in interprovincial movements.
- On indirect taxation, eight of ten provinces favour a provincial power to levy such taxes, even though the effect extends beyond provincial boundaries.
- On primary production, most provinces favour a detailed description which would extend provincial taxing and other powers under the new Constitution beyond the resources as such, to cover also primary production such as upgraded heavy crude oil, lumber and so on.

The Government of Canada, for its part, responds as follows:

- On ownership and management, we have no problem in accepting the principle and are in substantial agreement with the text which has been worked out.
- On exports of resources, we agree that provinces should have concurrent power over exports to other parts of Canada, subject to federal paramountcy over interprovincial trade. We do not agree that this concurrent power should extend to provincial exports to other countries.
- On indirect taxation, we are ready to accept the text which is supported by eight provinces.
- On primary production, we are also ready to accept the text which is supported by the great majority of the provinces.

The Government of Canada, in making proposals for changes in this important field, has to bear in mind the enormous importance which resources already play in the economy and the lives of Canadians. As resources become more scarce in the world, they will play an even greater part. We must think more than twice before making changes which could substantially reduce the future capacity of the federal government to carry out its responsibility for Canada as a whole. In the circumstances, I believe that the response I have just indicated, which is positive on a number of important points, warrants serious consideration.

I might say a few words on the areas where the differences are perhaps the greatest between ourselves and the producing provinces. On the question of a greater limitation on Parliament's capacity to use its power in connection with interprovincial movements of resources, the more we have thought about this, the more potential

difficulties we have come to foresee. In giving provinces concurrent jurisdiction, we are already giving them the power to legislate on these movements, and Parliament, to use its paramountcy, will have to act in specific opposition to the formally expressed will of the legislature. This unquestionably makes it more difficult for Parliament to act, and it can be reasonably counted upon to act only when there is a substantial national interest at stake. This, we think, is all the limitation we should prudently accept.

On the question of provincial concurrency over international exports, we also foresee considerable difficulties if such a provision were to be adopted. We do not wish to see anything done to impair Canada's capacity to speak with one voice abroad and to deal effectively with foreign governments. We do not wish to face situations where conflict between a legislature and Parliament might serve as an invitation to foreign countries to take advantage of our domestic differences.

Nevertheless, I recognize the real problem that was posed for Saskatchewan by the Central Canada Potash Case, where a Supreme Court ruling prevented the province from taking certain steps to manage its resources. We want to help solve such problems; the task this week is to find the best way to do it.

I am looking forward to hearing the contributions which all of you around the table will undoubtedly wish to make on this most important question.

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FEDERAL-PROVINCIAL CONFERENCE
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FIRST MINISTERS ON THE CONSTITUTION



Opening Statement by
Mr. René Lévesque
Premier of Québec

Ottawa
September 8-12, 1980

Mr. Chairman, our meetings this week, like all the feverish work that has gone on this summer since the meeting of June 9 when you urged us so strongly to revive what has been referred to as the constitutional road show, stem directly, as you have pointed out, from the Quebec referendum and its results.

There are other contributing factors, of course, but anyone who considers the matter objectively will admit that the referendum was the main one, that it was in a sense the catalyst.

Now in this referendum, how were a majority of the voters convinced - in the words of a slogan - that a No would be the vote of a Quebecer (que leur non serait québécois)?

Naturally, it was by making commitments, the most spectacular of which - if not the most precise - were those of the federal Prime Minister himself. Less than a week before the referendum, Mr. Trudeau had this to say at the Paul Sauvé Centre in Montreal:

(TRANS) I say solemnly to Canadians in the other provinces, we in Quebec are sticking our necks out when we tell Quebecers to vote No. We are saying to you that we are not prepared to have you interpret a No as an indication that everything is as it should be and that everything can stay as it was before.

We want changes.

In these vague, but very touching, words, the federal Prime Minister, speaking to the rest of Canada, let it be understood that the interests and the aspirations of the people of Quebec would have an important place in

constitutional renewal. A Quebecer with a good head on his shoulders, listening in good faith to this statement, must have understood this.

And there were, moreover, the promises of all the proponents of the No who had banded together under their "umbrella" committee, and in addition, the urgent and solemn pronouncements of some of our colleagues in the other provinces, one of the most eloquent being surely, we will recall, the Premier of Saskatchewan.

All things considered, then, what could we take from this in Quebec? What could we, and what can we still, justifiably expect as a result of the majority No vote in May?

I believe that the best answer is to be found in two lines of this sentence, which my colleagues from all the other provinces, unanimously, agreed in fairness, in simple fairness, to include in our joint statement during the Winnipeg conference. The Winnipeg statement said that (TRANS) "there is agreement on the need to fulfil the promises that have been made to the people of Quebec that there would be constitutional changes which would meet their aspirations". This seems to me to be quite clear as far as it goes, but what are these aspirations? They are those which are shared not only by a majority of those who voted No, but also, as an essential minimum, by all those who voted Yes.

Each of us around the table has his priorities. These priorities are not necessarily irreconcilable - far from it; indeed an impressive degree of consensus has been reached during the summer. But each of us has a duty to put forward his priorities when they are essential and to defend them to the end on behalf of the province he represents.

Quebec has its priorities like everyone else, and the other provinces must not imagine that it forgot them or abandoned them the day after the referendum. Quite the contrary, since we were clearly given to understand that the chances of these aspirations and priorities being realized would be better than ever if a majority voted to maintain the federal tie. Obviously - incidentally the Premier of Ontario has also gone somewhat beyond the bounds of the twelve topics - what I have just said is outside the twelve topics which were to some extent dictated to us on June 9 and which we have before us.

I am sure that what I am going to say in a few words, about aspirations and priorities will strike a responsive chord in the vast majority of Quebecers. To begin at the beginning, the Canadian federation came into being in the last century, first and foremost to make possible the association of two distinct peoples.

This in no way diminishes the importance or the very distinctive character of the Maritimes which had also to be taken into account (there were four founding provinces), but first and foremost - I repeat - federalism was the result of a compromise without which the people of Quebec, and the French nation whose homeland is Quebec, would never have accepted the new system.

We are the only representatives of our race, on a continent where everyone else is and remains forever destined to speak another language and to live another culture; it is for this reason that Quebec insisted from the beginning that, at the very least, it have, for itself alone, a democratic parliament with sovereign powers in the areas which at that time were felt to be essential to maintaining and developing its national identity. It goes without saying that these powers are still essential, particularly in the spheres of language policy and education. There can be no question of taking these powers away from our National Assembly in any way, nor can they be to the slightest degree subject to outside decisions. And if there are those who would like to do that be going over our heads, I must say very simply that they would not be out of the woods even then.

Here is something else, and I think that everyone is agreed on this: we realized over the years that as time went on these powers defined over a hundred years ago were becoming less and less adequate for the satisfactory development of our societies, in particular that of Quebec.

The evolution that has been carrying all of us along, particularly since the Second World War, led us, whether we liked it or not, to realize that the old federal mould was obsolete. This is why we began speaking of constitutional revision or renewal, and making the many attempts at it, all of which have so far failed. Here I do not claim to speak for the others; I will just say that as far as we are concerned, as Quebecers, these attempts have failed, because they quite simply bypassed what is essential. And what is essential - the key, for us - is the division of powers. For the past thirty or forty years at least, as our society became more modern and felt the need to equip itself with new or more complete tools, every government of Quebec, without exception, has continually called

for these tools. I am speaking, for example, about what my immediate predecessor, Mr. Robert Bourassa, called cultural sovereignty, which includes communications. In 1867 communications meant the telegraph, which did not have a tremendous importance for people's identity, but now we have the telecommunications galaxy, which for better or worse is the daily extension of academic education; that means that all our lives, individually and collectively, are affected. This is the heart of what is called popular education, which is important for the identity of a distinct society.

I am also talking, when I speak of the need for changes in powers, of instruments and means of economic development, which for reasons we know well is now at the centre of the concerns of all our fellow citizens everywhere.

Quebec needs these tools and means of economic development not only because its government, like all the provincial governments, is closer to both the problems and the opportunities for development, but also because it represents a society that, while it is just as North American as the others, is also completely different, and is therefore not as mobile. A French-speaking Quebecer is less mobile than any other Canadian; that is normal. And that accordingly requires that this society have the greatest possible number of opportunities and tools for progress - at home, if you like, and in its own possession.

In point of fact, it's a matter of obtaining a much broader range of action in the area of social policy. x
That stands to reason. When a society is different, its approaches and priorities may necessarily be different

as well. A political system that failed to take this into account would soon lapse into absurdity. Thus any renewal - since that is what we are coming to talk about here - any renewal of the system, to be valid, I would even say to be viable for Quebec, would have to be achieved via such a practical acknowledgment, a concrete acknowledgment of its national identity and of the requirements this entails for the future. And, needless to say - at least there should be no need to say it although it is probably better to point it out since there are some who might forget it - needless to say the people of Quebec, like any other people of the world, would not consider for a moment giving up the right it has and will always have to continue to decide its destiny freely. It is obvious that not everything will be settled as it should be during this week. Particularly considering that the twelve topics before us fall far short of covering everything I just referred to. But there are some that affect this area directly and that will enable us to see whether it is in fact in this direction that we are to be committed. As was stressed in June when the federal Prime Minister dictated this list to us, the entire summer constituted - and the days ahead will again constitute - a test which, in our view, could never be considered the final test, regardless of the results. And I should mention immediately, as far as we are concerned and to reflect the unanimous opinion of the Quebec National Assembly, that there will not be - or I am much mistaken - sufficient results this week to warrant early patriation of the constitution. This famous patriation, in point of fact, is not the fine decolonizing gesture it is made out to be. That type of over-simplification is quite dangerous - throughout the world there are always those who over-simplify terribly - its dangerous, that type of over-simplification that tells us that it is backward, almost scandalous,

to leave that important, central old paper, to leave it lying around in England rather than bring it back to Ottawa immediately. Because if we are really serious in talking about renewal, it is not that symbolic old paper that counts above all - it could even be left over there - it is the new contract that we are supposed to be negotiating, even if it is not complete and even if not all the clauses are initialled; we have first to see clearly whether this new contract looks good and whether everyone really accords it an open mind and acts in good faith before signing anything.

Patriation practically amounts to a preliminary signing - we must not forget that. It has always been agreed, in fact it's an established, deeply-rooted tradition - and an excellent precautionary one at that - that any patriation of the Constitution would require unanimity. What's more, thinking back to the historical precedent of '64/'67, would it not have been not only premature but truly ridiculous for representatives of the founding provinces to have gone to London and said something like: "We're not quite sure what we want and we haven't really settled any of the basics but don't worry, it'll work itself out!"

In closing, I should like to say a word about good faith and credibility. After our referendum in Quebec, we in the Government of Quebec had to change direction. This change of direction was painful - I will not try to conceal that from you - but we made the change three months ago, without hiding anything from anyone, in plain sight, with even a parliamentary commission to report on it. We have worked honestly and diligently at this new attempt at renewal, but - I have to say what I am thinking, and I am not the only one around the table - we are obliged to ask ourselves whether our federal counterparts have also made a change of direction of any kind. After weeks of discussion

on these twelve topics, after we have been shown certain scenarios that seem desperately prefabricated, after yet another huge advertising campaign paid for out of public funds, after the shocking intentions and the temptation to act unilaterally disclosed in the last few days by the federal Prime Minister - could all these long weeks of intense discussion be simply a smokescreen to disguise aims that are as centralist as ever and the old desire to offer, not a very necessary increase but a reduction, to their simplest terms, of the powers and freedom of action of the provinces?

I hope not. We all hope not, but it must be admitted that the question is still there.

Thank you, Mr. Chairman.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



COMMUNICATIONS
NEED FOR CONSTITUTIONAL AMENDMENT
ON COMMUNICATIONS

BRITISH COLUMBIA

Ottawa
September 8-12, 1980

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Government
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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Notes for a
Statement by the Prime Minister of Canada
on Communications

Ottawa
September 8-12, 1980

COMMUNICATIONS

In approaching our discussion of jurisdiction over communications, we should be mindful of the extraordinary rapidity with which technological change has occurred and is still continuing in the field of electronic communications. This change is creating what has been called the "information society". It draws comments such as the following from observers:

- electronic communications have a greater and greater impact on all aspects of our lives;
- they serve to bring people together over distances and across political borders;
- every sector of communications: telephone, broadcasting, cable, satellites, computers, interconnects with every other part in networks of greater and greater complexity.

These qualities of communications are particularly important in a country like Canada where distances are so large and where the diversity of languages, culture and economic development is so important.

All of us in Canada now take efficient communications for granted. It so happens that, at the moment, the Constitution gives the Government of Canada almost all jurisdiction over the field of communications

including telephones. Any new constitutional arrangements must hold the promise of improvement in services for the individual citizen, for the economy, and for the future of the country.

In communications, we are being asked to transfer broad powers to the provinces right across the board. The requested transfers would include control of all telephone companies and telecommunications carriers, including interprovincial and international services. The entire operations of the cable industry would pass into provincial hands. In conventional broadcasting, only the CBC would remain a federal responsibility, together with some authority over the commercial use of programming received off-air from American television stations. Moreover, under provincial demands, the authority of the Government of Canada over the use of the frequency spectrum would be confined to its technical aspects. In regard to satellite communications, we are asked to confine federal authority to the satellites in orbit leaving the provinces to regulate and control the use of stations on the ground.

The Canadian public is entitled to ask what benefit to Canada, to Canadians, to the Canadian economy is to be expected from such a fundamental transfer of authority and we have asked ourselves that same question. We have concluded we cannot accede to the demands of provinces but we are, nonetheless, proposing important transfers which I shall now summarize.

Concerning telephone, we are prepared to transfer jurisdiction over all telephone companies inside a province. This would mean that authority over Bell Canada, one of Canada's largest corporations, would be

transferred to Ontario and Quebec. It would also mean that authority over British Columbia Telephones would be transferred to the Province of British Columbia and authority over Terra Nova Tel in Newfoundland to that province so that all provinces would be in the same position in relation to their telephone utilities.

The federal position is clear and simple:

what goes on within a province should be provincial; what is interprovincial or international should remain federal. The Government of Canada would retain authority over matters of national interest like interprovincial and international rates and services. Teleglobe, Telesat and CN/CP Telecommunications would remain under federal authority.

Cable is a more complex question. Like telephone, its physical equipment is locally installed. However, a very large portion of the messages it carries - like radio, television, films, etc. - comes from outside the province or indeed outside the country. Its activities also have enormous impact on broadcasting. Thus it is not an easy subject.

Here also, we are proposing important transfers of authority to the provinces. Again we are guided by the intra-provincial, interprovincial principle.

Thus, we propose to transfer to the provinces authority to determine franchise areas and issue licences; to set subscription rates; to authorize and regulate community, instructional, and pay-TV within the province and related advertising; to regulate the two-way use of cable for business purposes and access to information

banks; and to authorize and regulate fire alarm, burglar alarm, and other security services. Cable undertakings serving subscribers in more than one province would remain under federal authority.

Cable systems would have to carry a national program service, as defined by Parliament. The use of all foreign programming would be subject to federal regulation.

In broadcasting, provinces propose that the Government of Canada retain the primary responsibility only for the CBC and networks serving four or more provinces. In broadcasting, no clear separation can be made between what is local, regional or national or between the public and private sectors. Thus, we can see only confusion arising from the provincial request for a division of authority in this field.

Hertzian waves that form the frequency spectrum cannot be limited to a particular locality and use of the spectrum is subject to international agreements. Similar considerations apply to the use of space, and to satellite communications. We therefore believe that it would be inconsistent with the federal government's responsibility to make transfers of authority with regard to the spectrum or to space communications including related stations on the ground.

These are the proposals of the Government of Canada. They involve - between our two levels of government - very important divisions of responsibility in a field where the various industries and technologies are closely related and where the objective is keeping

people in touch over distances. We believe that whatever solutions we arrive at as a result of our discussions, it will be necessary to develop co-operative institutions and mechanisms to preserve the essential role of communications in Canada.

COMMUNICATIONSNEED FOR CONSTITUTIONAL AMENDMENT ON COMMUNICATIONS

BRITISH COLUMBIA AGREES THAT COMMUNICATIONS HAVE AN IMPORTANT PRIORITY IN AMENDMENTS TO CANADA'S CONSTITUTION. BECAUSE THE TELEPHONE WAS NOT EVEN INVENTED TILL EIGHT YEARS AFTER THE B.N.A. ACT WAS PASSED, AND THE INVENTION OF RADIO FOLLOWED LONG AFTER THAT, THE TIME IS LONG OVERDUE FOR A NEW DECISION-MAKING PROCESS TO REPLACE THE SECESSION OF INDIVIDUAL COURT CASE PRECEDENTS ON COMMUNICATIONS THAT WE ARE LIVING WITH TODAY.

THE PEOPLE OF BRITISH COLUMBIA NO LONGER HAVE TO LOOK TO THE CENTRAL GOVERNMENT FOR THE EXPERTISE TO HANDLE OUR TECHNICAL PROBLEMS. AS WITH THE OTHER PROVINCES, AS OUR POPULATION HAS INCREASED IN SIZE AND SOPHISTICATION, WE HAVE BECOME MORE AND MORE RESTLESS WITH EXCESSIVE FEDERAL INVOLVEMENT IN MATTERS WE SEE AS PRINCIPALLY LOCAL CONCERNS. COMMUNICATIONS IS ONE OF THESE.

NOWADAYS OUR HOMES ARE PROTECTED NOT ONLY BY THE LOCAL POLICE FORCE AND FIRE DEPARTMENT, BUT ALSO BY ALARM SYSTEMS OFFERED AS PART OF A TELECOMMUNICATIONS PACKAGE. THE "WANT" ADS IN THE LOCAL NEWSPAPER WILL SOON BE SUPPLEMENTED BY INFORMATION WHICH A PERSON CAN CALL UP ON THE SCREEN OF HIS HOME T.V. SET.

MORE AND MORE WE ARE FINDING THAT EDUCATIONAL OPPORTUNITIES ONCE LIMITED TO THOSE LIVING IN THE LARGER CENTRES CAN NOW BE EXTENDED TO PEOPLE EVEN IN REMOTE COMMUNITIES BY TELECOMMUNICATIONS. THE PROVINCES HAVE A LEGITIMATE ROLE IN THE EXPANDING COMMUNICATIONS FIELD, AND THIS IS AN APPROPRIATE TIME TO REDEFINE IT.

B.C. SUPPORTS BEST EFFORTS DRAFT

OVER THE PAST FEW MONTHS, MINISTERS AND OFFICIALS HAVE BEEN WORKING HARD TO FIND A FORMULA FOR REDISTRIBUTION OF POWERS RESPECTING COMMUNICATIONS THAT WILL SATISFY ALL PARTIES. THEY HAVE MADE GREAT PROGRESS. WE HAVE BEFORE US THE REPORT OF MINISTERS WHICH INCLUDES TWO DRAFT PROPOSALS FOR CONSTITUTIONAL AMENDMENT. BRITISH COLUMBIA SUPPORTS THE DRAFT TITLED "BEST EFFORTS DRAFT".

SPEAKING IN SUPPORT OF IT, MR. CHAIRMAN, I WISH TO MAKE THE FOLLOWING POINTS:

1. ITS APPROACH, OF CONCURRENT JURISDICTION WITH SPECIFIED AREAS OF RESPECTIVE PARAMOUNTCY, REFLECTS A THEME WHICH HAS BEEN APPARENT FROM THE OUTSET; NAMELY, THAT BOTH ORDERS OF GOVERNMENT HAVE EXTENSIVE INTERESTS IN COMMUNICATIONS.
2. THE BEST EFFORTS DRAFT GIVES THE FEDERAL GOVERNMENT A FREE HAND IN AREAS OF ADMITTED FEDERAL CONCERN, SUCH AS NATIONAL BROADCASTING NETWORKS, FOREIGN BROADCAST SIGNALS, AND USE OF TELECOMMUNICATIONS WORKS IN TIMES OF NATIONAL EMERGENCIES.
3. IT INCLUDES PROVISIONS TO ENSURE THE FREE FLOW OF INFORMATION WITHIN CANADA AS A WHOLE, AND TO AVOID DISRUPTION OF SERVICE IN THE EVENT OF CONFLICTS BETWEEN PROVINCES.
4. AT THE SAME TIME, IT GIVES THE PROVINCES SUFFICIENT SCOPE, IF THEY CHOOSE TO DO SO, TO COORDINATE COMMUNICATIONS WITHIN THEIR BOUNDARIES SO AS TO COMPLEMENT OTHER PROVINCIAL PRIORITIES.
5. WITH SAFEGUARDS, IT ASSUMES RESPONSIBLE STEWARDSHIP BY BOTH LEVELS OF GOVERNMENT, AND ASSIGNS TO EACH LEVEL SIGNIFICANT ROLES WHICH CAN BE CARRIED OUT WITHOUT UNDUE INTERFERENCE FROM THE OTHER.

BY CONTRAST, THE FEDERAL DRAFT IS EXTREMELY PATERNALISTIC. ROLES SAID TO BE EXCLUSIVE PROVINCIAL JURISDICTION UNDER SECTIONS 92(Y) AND (Z) ARE IN FACT SO RESTRICTED BY EXCEPTIONS AND BY EXCLUSIVE FEDERAL JURISDICTION CONFERRED BY SECTIONS 91(W), (X), (Y), AND (Z) THAT THERE IS VIRTUALLY NO POWER A PROVINCE COULD EXERCISE WITHOUT BEING FETTERED BY OVERRIDING FEDERAL AUTHORITY.

IMPLICATIONS FOR B.C.

IT IS AN ESTABLISHED POLICY OF THE GOVERNMENT OF BRITISH COLUMBIA THAT THE MAJOR CARRIER IN THE PROVINCE, B.C. TEL, SHOULD BE REGULATED PROVINCIALY RATHER THAN FEDERALLY. IN MUCH THE SAME WAY AS YOU FIND IT IRRITATING TO HAVE TO GO TO WESTMINSTER ANY TIME SOME ASPECT OF OUR CONSTITUTION NEEDS AMENDING, MR. CHAIRMAN, SO DO WE FIND IT IRRITATING TO HAVE TO GO TO OTTAWA FOR ADJUDICATION EVERY TIME B.C. TEL HAS SOME ASPECT OF ITS TARIFF TO AMEND. IN SEEKING THAT JURISDICTION, HOWEVER, WE HAVE CONSISTENTLY REJECTED THE ADMINISTRATIVE NIGHTMARE TO BOTH COMPANY AND GOVERNMENT THAT A SPLIT IN REGULATORY AUTHORITY BETWEEN INTRA AND INTERPROVINCIAL ASPECTS COULD CREATE.

THE BEST EFFORTS DRAFT GIVES A CLEAN, CONSISTENT AUTHORITY TO THE PROVINCE OVER THE WHOLE COMPANY.

OUR RECENTLY-CREATED KNOWLEDGE NETWORK OF THE WEST COMMUNICATIONS AUTHORITY IS JUST THAT -- A COMMUNICATIONS AUTHORITY FOR THE PURPOSE OF INCREASING THE AVAILABILITY OF EDUCATIONAL COURSES THROUGHOUT THE PROVINCE. THERE IS NO REASON FOR FEDERAL INVOLVEMENT IN IT, EVEN THOUGH IT MIGHT IN SOME CASES SHARE THE SAME FACILITIES AS THE CARRIAGE OF BROADCAST PROGRAMMING. THE BEST EFFORTS DRAFT WOULD GIVE BRITISH COLUMBIA FREEDOM TO DEVELOP THE KNOWLEDGE NETWORK IN THE BEST INTERESTS OF THE PEOPLE OF THE PROVINCE.

ONE OF THE COMMITMENTS MADE IN THE RECENT MERGER OF PREMIER COMMUNICATIONS WAS TO INCREASE SERVICES AVAILABLE TO SUBSCRIBERS OF THE AFFILIATED CABLE COMPANIES IN BRITISH COLUMBIA. ADOPTION OF THE BEST EFFORTS DRAFT WOULD PERMIT THOSE SERVICE IMPROVEMENTS TO GO AHEAD WITHOUT HAVING TO WAIT IN THE LONG QUEUE FOR CRTC APPROVAL.

FINE TUNING

THERE MAY BE SOME POINTS IN THE BEST EFFORTS DRAFT WHERE A LITTLE FINE TUNING WOULD BE APPROPRIATE. THERE MAY BE A FEW SPOTS WHERE IT COULD BE IMPROVED. BRITISH COLUMBIA HAS NO OBJECTION TO MINOR CHANGES BEING CONSIDERED. HOWEVER, ITS CONCEPT IS SOUND; IT IS A WORKABLE PROPOSAL IN THE OPINION OF ALL TEN PROVINCES, AND BRITISH COLUMBIA SUPPORTS ITS ADOPTION IN ESSENTIALLY ITS PRESENT FORM.

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Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Prince Edward Island

Proposal

for

A New Upper Chamber

Ottawa
September 8-12, 1980

P.E.I. DRAFT PROPOSAL

ON TOPIC 3

THE SENATE: PART I

Senate within
the Parliament
of Canada

Membership

Councillors

Senators

Tenure of
Senators

Reappointment
of Senators

Qualifications
of Senators

Federal
Government
Spokesmen

Votes

Powers

1. There shall be a second chamber styled the Senate which, together with the Queen and the House of Commons, shall comprise the Parliament of Canada.
2. The Senate shall have one hundred (100) members.
3. (a) Twenty of the Senate members, each two of whom are to be appointed by the Lieutenant Governor in Council of each province and styled Councillors, shall, in relation to matters cited in Part II, Section 10, form themselves into a body to be called the Council of the Provinces and shall exercise such powers of ratification as are specified in Part II, Section 9.
 X (b) Councillors may also debate and vote on all other matters coming before the Senate.
4. The remaining eighty members of the Senate shall be styled Senators, eight of whom shall be appointed by the Lieutenant Governor in Council of each province.
5. (a) Each Senator shall hold office for eight years.
 (b) Initial appointments by the Lieutenant Governor in Council of each province shall be staggered, so that appointments will be equally divided into two (2), four (4), six (6), and eight (8) year terms.
6. (a) The Lieutenant Governor in Council of each province may reappoint any senator for a second term.
 (b) No senator may serve more than two terms.
7. Subject to 6(a) and (b), the legislative assembly of a province may prescribe the qualifications for its Senators.
8. The Federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in the Senate and to speak to any matter before the Senate.
9. (a) All members of the Senate shall have one vote.
 (b) All matters coming before the Senate shall be decided by a simple majority of members present.
10. The Senate shall review and vote on all federal bills coming from the House of Commons except:
 - (a) appropriation bills;
 - (b) those bills or actions in relation to matters pursuant to Part II, Section 10, which are reserved for the Council of the Provinces.

11. (a) Unless otherwise specified herein, the failure of legislation to receive the required simple majority of the votes cast by the members present shall suspend the legislation for a period of ninety (90) days.
- (b) After ninety (90) days, such a suspension may be overridden by a repassage of the legislation in the House of Commons requiring one reading and a simple majority.

Initiation
of bills

12. With the exception of matters referred to in Section 10(a) and (b) above, the Senate shall have power to initiate bills and to refer those bills which have received Senate approval to the House of Commons.

Procedure

13. (a) The Senate shall have power to determine its own procedure.
- (b) A simple majority of members shall be necessary for the establishing of any rules of procedure.

THE SENATE: PART II

COUNCIL OF THE PROVINCES

Council
established

1. There shall be a body within the Senate to be called the Council of the Provinces.

Membership

2. The Council shall have twenty (20) members.

Appointment

3. The Lieutenant Governor in Council of each province shall appoint two members of the Council.

Head of
delegation

4. The Lieutenant Governor in Council of each province shall designate one member to be the head of that province's delegation.

Tenure of
members

5. Each member holds office at the pleasure of the Lieutenant Governor in Council of his respective province.

Qualifications

6. (a) A member of a provincial legislative assembly may also be a member of the Council.
- (b) Subject to (a) the legislative assembly of a province may prescribe the qualifications for its members to the Council.

Federal
Government
Spokesman

7. The federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in and speak to any matter coming before the Council.

Votes

8. (a) Each province shall have one vote on every matter before the Council.
- (b) The vote of each province shall be cast by the head of that province's delegation or his designate.

Ratification

9. (a) Unless otherwise specified herein, the ratification of any matter coming before the Council requires a two-thirds majority of the votes cast.

- (b) Unless otherwise specified herein, the failure of legislation or an appointment to receive the required majority means that the legislation or appointment shall not take effect.
- (c) Legislation on which the Council has made no decision within ninety days from the time of referral shall be deemed to be ratified unless an extension of the time is made by the federal government. Appointments on which the Council has made no decision within thirty days from the time of referral shall be deemed to be ratified.

Powers

- 10. Matters coming within the following classes shall be referred to the Council for its consideration, debate and disposition according to Section 9, namely
 - (a) The exercise by the Parliament of Canada of the declaratory power pursuant to Section 92(10)(c).
 - (b) (i) Laws of the Parliament of Canada initiating general conditional grants to the provinces in relation to matters within exclusive provincial jurisdiction.
(ii) 1
 - (c) (i) Laws of the Parliament of Canada made pursuant to the opening words of Section 91 or actions of the Government of Canada pursuant thereto, which have the effect of suspending in whole or in part the normal distribution of legislative powers between the Parliament of Canada and the legislatures of one or more of the provinces, except in cases where there is a state of real or apprehended war, invasion or insurrection.
(ii) Any measure taken to deal with real or apprehended insurrection will become inoperative fifteen days after having been proclaimed unless it is ratified by the Council.
 - (d) Laws of the Parliament of Canada, or sections thereof, which are to be administered by provincial governments
 - (e) Approval of appointments to the managing bodies of such federal boards, commissions or agencies, as are determined from time to time by the Conference of First Ministers, to have significant interest to all or some of the provinces.

- 1. Such matters might also include:

"Laws of the Parliament of Canada initiating payments to classes of individuals of institutions in relation to matters within exclusive provincial jurisdiction".

- (f) Other matters which have emerged or might emerge in the overall process of constitutional review which the First Ministers deem appropriate.

Dualism

- 11. In the case of any matter coming before the Council which is in relation to the French language or French culture the ratification of the Council would require that the two-thirds majority prescribed by Section 9 (a) include the affirmative vote of Quebec.

Procedure

- 12. (a) The Council shall have power to determine its own procedure.
- (b) A simple majority only shall be necessary for the establishing of any rules of procedure.

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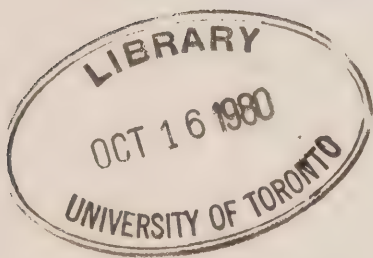
Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

Transcript of the Prime Minister's
Opening Remarks at the First
Minister's Conference, September 8, 1980

Transcription de la déclaration
du Premier Ministre lors de
l'ouverture de la conférence
des Premiers Ministres le
8 septembre 1980



Ottawa
September 8-12, 1980

Ottawa
du 8 au 12 septembre 1980

TRANSCRIPT OF THE PRIME MINISTER'S OPENING REMARKS
AT THE FIRST MINISTER'S CONFERENCE, SEPTEMBER 8, 1980.

TRANSCRIPTION DE LA DECLARATION DU PREMIER MINISTRE
LORS DE L'OUVERTURE DE LA CONFERENCE DES PREMIERS
MINISTRES LE 8 SEPTEMBRE 1980.

THE CHAIRMAN: (THE RIGHT HONOURABLE
PIERRE ELLIOTT TRUDEAU, PRIME MINISTER OF CANADA):

A l'ordre mesdames et messieurs,
can we come to order please.

Je voudrais d'abord souhaiter la bien-
venue à tous ceux qui vont suivre cette conférence.

I would like to welcome everyone in
this room and all those watching the proceedings
through television or listening to them through
radio. We are starting yet another of these
Federal-Provincial Conferences on the Constitution.
All have been important, but this one may be
particularly important. It may be the most
important since the 1864 one. Since the Quebec
Referendum last May gave the people of Quebec a
change to state clearly that they wanted to remain in
Canada and most of us around this table undertook
on that occasion to ensure that there be
Constitutional renewal and this is the first time
we meet as First Ministers all fervently hoping
I am sure that there will be a definite impetus
given to Constitutional renewal.

I would first like to welcome the
observers and amongst them the official leader of
the Opposition and the leader of the New Democratic
Party and many other Parliamentarians are joining

them as observers. Many observers nominated by the provinces. I would like to acknowledge the presence in particular of official observers of the territorial delegations led by the Honourable George Braden, leader of the Executive Committee of the Government of the Northwest Territories and by Mr. Chris Pearson, leader of the Government of the Yukon Territory. This is the first time that the territories are represented as observers, not as part of the federal delegation represented through their Commissioner but by their elected representatives as independent observers.

I would also like to welcome representatives of the three national associations of native peoples. I mention in particular Mr. Del Riley of the National Indian Brotherhood, Mr. Charlie Watt and Mr. John Amagoalik, co-chair persons of the Inuit Committee on National Issues, Mr. Harry Daniels, President of the Native Council of Canada. These native leaders were able to present their views on the 12 agenda items through the continuing committee of Ministers so ably co-chaired by Mr. Chretien and Mr. Romanow and we have their report before us.

Finally I want to acknowledge the observers from the Federation of Canadian Municipalities, Mayor Dennis Flynn, President, et le maire Jean Pelletier, first Vice-President of the Federation and, of course, many other observers.

At this point I might ask Mr. Ed Watson, acting Secretary of the Canadian Inter-governmental Conference Secretariat if he has any announcements to make.

THE SECRETARY:

Thank you,

Mr. Chairman, for inviting me to comment on the arrangements which have been made for this conference. These are the traditional ones and as usual they are described in the material which the Secretariat has circulated to all delegations. The Conference Secretariat's staff will be happy of course to provide additional information which any of you may need as the conference proceeds and we wish to assist you in any way we can.

Comme à l'habitude les services du secrétariat seront à la disposition de chacune des délégations à toute heure. Au nom de toute l'équipe du secrétariat, je me permets, monsieur le président, de souhaiter à vous et à vos collègues provinciaux un déroulement heureux aux pourparlers que vous entreprenez aujourd'hui. Merci, monsieur le président.

LE PRESIDENT: Merci, monsieur le secrétaire. Alors, mon premier devoir serait d'établir l'ordre du jour, nous en avons parlé un peu hier soir, et nous étions convenus d'en décider l'ordre ce matin.

If I can just state the question quite simply, I don't think any of us would want to discuss it too long. It is not all that important certainly from my point of view but I suggested an agenda to the First Ministers based on the recommendations I received from the co-chairmen of the continuing committee, Mr. Chretien and Mr. Romanow. Four delegations propose a different agenda, four propose that they accept the agenda coming from the co-chairmen one changed ^{his} its mind Friday so now we have a situation where five delegations, five First Ministers would like to follow the agenda proposed and followed it since June by the continuing committee of Ministers and three are accepting the one of the co-chairmen and two didn't comment, so I imagine they accept the agenda proposed by the co-chairmen. Maybe we could have a few minutes indicating preferences and then get on the business, whatever the agenda is. Anybody want to volunteer?

THE HONOURABLE MR. STERLING LYON

(Manitoba): Perhaps I could indicate emerging out of a meeting of the Premiers yesterday relative to an updating that we received on matters that have transpired since the meeting of the Premiers in Winnipeg in mid-August, there seemed to be a consensus which will be manifested here or not manifested as the case may be that it would be preferable from the standpoint of opinions

expressed at that time if we were attempt to the follow schedule that the Continuing Committee of Ministers had followed during the summer, namely, Resources, Communications, The Senate and so on down through the 12 topics.

That again, as you suggested, sir, I don't think anyone is hidebound by that in anyway at all, but that seemed to be the consensus yesterday among the Premiers when we discussed it.

THE CHAIRMAN: I think what the co-chairmen did is attempt to put some of the items dealing with division of powers between governments and some of the items which don't have to do with division of powers but which have to do with the Constitution itself, like patriation, like the Bill of Rights in a mixed order so that we could deal with them in that fashion, dealing with some of the requests of the provinces for more power and dealing with the suggestion made by the federal government and other governments that we patriate the Constitution and insert in it a Bill of Rights and I must say we had preference for the suggestion made by the co-chairmen. It seemed to us that that might be a proper way to deal with all the items. The most important aspect is that I accepted the suggestion of the Premiers that we deal with all the items together without interruption or any form of adjournment as had

first been proposed for Tuesday afternoon.

If the Premiers still wish to follow the suggestion of their Chairman, Mr. Lyon, who is the Chairman of the Inter-Provincial Conference of First Ministers, I hear Mr. Levesque saying "Yes." I notice that I think in an effort to be friendly to the federal government when they, quand vous avez étudié ces sujets l'été dernier, vous avez suivi l'ordre fédéral, à la conférence, au comité que vous avez tenu cet été à l'Assemblée nationale, mais si vous voulez également suivre l'ordre proposé par les premiers ministres hier, nous sommes d'accord.

HONORABLE M. RENE LEVESQUE, PREMIER
MINISTRE DE LA PROVINCE DE QUEBEC: Ca va.

THE CHAIRMAN: The first item of the agenda will be the opening statements. As Chairman I proposed there be no opening statements hoping we could get down to business, but I think I was overruled on that too and we should have a series of opening statements, and I will first call on the Premier of Ontario and follow the traditional order at these conferences.



Government
Publication

MANITOBA'S POSITION
PAPER ON FAMILY LAW
FOR
THE FIRST MINISTERS
CONFERENCE
SEPTEMBER 8 - 11, 1980.



I N D E X

- I. Introduction, p. 1-2.
- II. Manitoba recommends that the present federal jurisdiction with respect to divorce be retained, and opposes any proposed transfer of this jurisdiction to the provincial governments, p. 3 - 10.
- III. Manitoba recommends that the present federal jurisdiction with respect to divorce not only be retained but that federal jurisdiction be expanded to include concurrent and paramount jurisdiction to deal with the monitoring and enforcement of all custody and maintenance orders, whether issued pursuant to federal or provincial legislation, p. 11-16.
- IV. Manitoba recommends that the constitution be amended to permit the legislatures of the provinces to appoint judges with jurisdiction to deal with all matters related to family law, to facilitate the establishment of a unified family court system, p.17.
- V. Analysis and criticism of arguments advanced in support of a transfer of divorce jurisdiction to the provinces, p. 18-23.
- VI. Criticism of the most recent federal proposal concerning inter-provincial enforcement, p.24-27.

MANITOBA'S POSITION PAPER ON FAMILY LAW

FOR THE FIRST MINISTERS CONFERENCE

SEPTEMBER 8 - 11, 1980.

I. INTRODUCTION

At the First Ministers Conference in February 1979, the Manitoba Government opposed the proposed transfer of divorce jurisdiction to the Provinces. This opposition has been maintained at the most recent meetings of the Continuing Committee of Ministers on the Constitution (C.C.M.C.). Manitoba Attorney-General, Gerry Mercier, has put forward the following positions:

1. That the present federal jurisdiction with respect to divorce be retained;
2. That federal jurisdiction be expanded to include concurrent and paramount jurisdiction to deal with the monitoring and enforcement of all custody and maintenance orders whether issued pursuant to federal or provincial legislation, and
3. That the constitution be amended to give the legislatures of the provinces the power to appoint judges with jurisdiction to deal with all matters related to family law, to facilitate the establishment of a unified family court system.

After two months of meetings of the C.C.M.C., Manitoba's position on Family Law remains unaltered and this is the position that Manitoba is advancing at the current Conference of First Ministers (September 8-11, 1980).

At this time, Manitoba is also opposing the most recent Federal proposal concerning inter-provincial enforcement of maintenance and custody orders. It is our opinion that implementation of this proposal would only augment existing enforcement problems, in addition to creating new difficulties in an area fundamental to the entire system of family law.

This is further elaborated under Heading VI of our paper.

II. MANITOBA RECOMMENDS THAT THE PRESENT FEDERAL JURISDICTION WITH RESPECT TO DIVORCE BE RETAINED, AND OPPOSES ANY PROPOSED TRANSFER OF THIS JURISDICTION TO THE PROVINCIAL GOVERNMENTS.

If divorce jurisdiction is transferred to the Provinces, it will result in a proliferation of new statutory guidelines respecting grounds for divorce, corollary relief and enforcement which would create serious and complicated legal and social problems in our country. It is Manitoba's position that the overriding need in the area of divorce legislation is for uniformity and consistency throughout the country.

The high degree of mobility of the Canadian population in general, and particularly of that segment of the population which is divorced or separated, makes it mandatory that legislation pertaining to divorce be consistent throughout the country. The statistical study entitled "The Frequency of Geographic Mobility in the Population of Canada", prepared and published by Statistics Canada in 1978, states at pages 31 and 32 as follows:

"Among the ages where most geographic mobility takes place, persons who were once married but were no longer living with their spouses at the time of the 1971 Census had consistently higher than average mobility rates...changes in marital status often entail or are otherwise associated with geographic mobility".

To allow Canadians to continue moving freely across the country and to protect the family which is the basic unit of the Canadian Society, it is mandatory that there be a federal divorce

law providing uniformity with respect to the grounds for divorce, corollary relief and enforcement. Otherwise, there is no guarantee that rights with regard to divorce will not be prejudiced merely by moving to another province upon separation. It is fundamental that divorce legislation remain federal in light of the pressing need of modern society for uniform and consistent divorce laws throughout the country.

Manitoba recognizes the concern expressed that family law should be responsive to local social and cultural values. However, because of the diversity of these values from region to region, it is impossible to reflect them completely in legislation, whether provincial or federal. The paramount concern in the area of divorce law must be consistency and uniformity. This can only be achieved by federal legislation. Local social and cultural values are adequately reflected in the discretion exercised by locally appointed judges administering federal legislation. For example, the Criminal Code, although federal legislation, is administered by the provinces, and the variation in sentences imposed for similar offences throughout the country indicates that judges sitting on these matters are exercising their discretion in light of local social needs and values. To further ensure that these local needs are being accommodated, these sentences cannot be appealed beyond the provincial courts of appeal.

The present operation of the Criminal Code has not been questioned as it is accepted that uniformity throughout the country

is essential in the area of criminal law. It is Manitoba's position that uniformity in the area of divorce is as essential as uniformity in the area of criminal law, and for this reason divorce should remain within federal jurisdiction.

Directly related to the need for uniformity in the area of divorce law is the serious problem of forum shopping, which was discussed by Professor Julien D. Payne of the University of Ottawa in his paper entitled "Divorce and the Canadian Constitution", reported in Volume 18 Conciliation Courts Review:

"Indeed, a transfer of all divorce power to the Provincial Legislatures could result in the creation of divorce meccas. Experiences in Nevada, Mexico and Haiti indicate that there is an economic market in the field of liberal divorce laws. Accordingly, a transfer of jurisdiction over the grounds for and bars to divorce to the Provinces could result in competition for the "divorce market" by way of extremely liberal jurisdiction criteria and "easy divorce grounds".

The Federal Government has proposed the retention of federal power over both the recognition of divorce decrees and the jurisdictional basis upon which divorces are granted as a solution to the problem of forum shopping. However, it is Manitoba's opinion, and the opinion of many family law practitioners and legal scholars throughout Canada, that it is naive to assume this would significantly prevent forum shopping. For example,

residency requirements giving jurisdiction to grant a divorce would not be a serious bar to a person who finds the grounds and corollary relief of a particular jurisdiction attractive - that person would be willing to reside for the required time in that jurisdiction to obtain such benefits.

The existence of divorce laws varying from province to province and the problem of forum shopping also creates a serious inequity as a financially independent spouse would be in a preferred position with respect to the selection of a favourable jurisdiction, and the financially dependent spouse could be prohibited from defending a petition adequately due to the costs involved. We agree that provinces will not intentionally become "divorce havens"; however, diversity of divorce laws pertaining to grounds, corollary relief and enforcement will invite the search for a more liberal jurisdiction and will in fact result in forum shopping.

Problems in addition to that of forum shopping have been encountered in the United States of America, where divorce is within the jurisdiction of the individual states. The problems are discussed in the Rodgers & Rodgers article "The Disparity Between Due Process and Full Faith and Credit: The Problem of the Somewhere Wife", (1967) Vol. 67 Columbia Law Review, 1363, and it is stated at page 1378 of this Article:

"The field of divorce is a fertile ground for conflict between the various states; indeed, a mobile population, widely conflicting views of many questions of domestic relations, and the frequency of litigation have combined to make interstate divorce the most persistent and preplexing of the full faith and credit problems".

Professor J. G. Castel, Osgoode Hall Law School, York University, Toronto, in the Ontario 1979 McGill Law Journal at Page 651 commented on the America situation:

"The American case law, while it has illustrated that divorce can be effectively adjudicated by the separate sovereignties, has not demonstrated that this can be done with optimal efficiency...

...a number of American authors in spite of constitutional prohibition, have suggested federal legislation in the area of divorce as a possible method of achieving uniformity.

In the absence of compelling reasons for transferring competence over divorce from the federal Parliament to the provincial legislatures, it might be preferable to leave things as they stand. Provincial competence could give rise to the very real perils of added litigation, inconsistent judgments regarding marital status and general confusion."

The irony inherent in the proposal that Canada should now consider moving towards the system presently in existence in the United States of America is pointed out by Professor Payne:

"Indeed it is ironic that Canada is moving towards an exclusive provincialization of family law matters whereas Australia has recently moved towards a federal regime and the United States has long been searching for a uniform Marriage and Divorce Act."

The concept of uniform legislation adopted by each state is the solution towards which the American States appear to be moving in an attempt to deal with the inconsistencies and inequities created by their system. However, this solution is at best a piecemeal one as each jurisdiction is at liberty to enact this legislation or not, as it chooses.

The Canadian experience with the unified reciprocal legislation adopted by most, but not all, provinces in the area of enforcement of maintenance and custody orders reveals tremendous discrepancies in the recognition and enforcement of orders across provincial boundaries as a result of differing provincial laws and procedures. In light of the history of our existing "uniform" legislation, it is naive to expect the Provinces to approach the problem of divorce with any greater consistency should jurisdiction in this area be given to each individual province. Bringing divorce into the provincial realm would only compound the existing problems!

It is significant that the position Manitoba is taking with respect to the retention of federal jurisdiction in the area of divorce is a position also favoured by most family law practitioners and women's organizations across the country, many of whom have publicly endorsed our position and expressed their opposition to the proposed transfer of divorce jurisdiction to their provincial governments.

The following Resolutions are significant:

1. The National Action Committee on the Status of Women, at its annual meeting held in March of 1979 in Ottawa, passed the following resolution:

"WE RECOMMEND THAT FEDERAL JURISDICTION OVER DIVORCE NOT BE RELINQUISHED TO THE PROVINCES, AND WE FURTHER RECOMMEND THE IMPLEMENTATION OF A UNIFIED FAMILY COURT SYSTEM IN EACH PROVINCE AND TERRITORY, WITH ADEQUATE AND CONTINUING FEDERAL FUNDING SPECIFICALLY ALLOCATED TO THE UNIFIED FAMILY COURT SYSTEM".

The Committee's Executive reviewed and confirmed this position, which was then officially presented to the Honourable Jean Chretien and the Honourable Francis Fox on June 13th, 1980 in Ottawa.

2. The Canadian Bar Association at their 61st annual meeting held in Calgary on August 28th, 1979 passed the following resolution:

"BE IT RESOLVED THAT THE CANADIAN BAR ASSOCIATION IS OPPOSED TO THE PROPOSED TRANSFER OF POWER OVER MARRIAGE AND DIVORCE FROM FEDERAL TO PROVINCIAL JURISDICTION."

This resolution was endorsed and approved at a meeting of the Provincial Chairpersons of the Family Sections of the Canadian Bar Association in Montreal on January 4th and 5th, 1980.

3. The National Council of Women of Canada passed the following emergency resolution in Winnipeg on May 28th, 1980:

"WHEREAS THE NATIONAL COUNCIL OF WOMEN OF CANADA BELIEVES THAT THE TRANSFER OF JURISDICTION OVER DIVORCE FROM THE FEDERAL GOVERNMENT TO THE PROVINCES, AS AGREED IN PRINCIPLE AT THE FEDERAL PROVINCIAL CONFERENCE OF THE CONSTITUTION OF FEBRUARY OF 1979, IS NOT IN THE BEST INTERESTS OF CANADIAN FAMILIES: THEREFORE BE IT RESOLVED, THAT THE NATIONAL COUNCIL OF WOMEN OF CANADA URGE THE GOVERNMENT OF CANADA TO RETAIN THE JURISDICTION OVER MATTERS OF DIVORCE".

The Canadian Advisory Council on the Status of Women has expressed concern with regard to the proposed transfer. In the Council's annual report for the 1979-1980 year, dated June 10th, 1980, and addressed to the Honourable Lloyd Axworthy as Minister responsible for the Status of Women, it is stated at page 7:

"The Canadian Advisory Council on the Status of Women strongly objected to the proposed transfer of jurisdiction over divorce from the federal government to the provinces until the impact of this transfer had been thoroughly studied to assess its effect on women."

This matter was to be discussed further by the Council at its annual meeting in Ottawa on September 5th and 6th, 1980, but unfortunately this meeting has been postponed as a result of a strike by federally employed translators. One of the major issues of this strike is maternity leave benefits, and the Executive of the Council decided on September 2, 1980 that in support of this issue its members would not cross the picket line.

III. MANITOBA RECOMMENDS THAT THE PRESENT FEDERAL JURISDICTION WITH RESPECT TO DIVORCE NOT ONLY BE RETAINED BUT THAT FEDERAL JURISDICTION BE EXPANDED TO INCLUDE CONCURRENT AND PARAMOUNT JURISDICTION TO DEAL WITH THE MONITORING AND ENFORCEMENT OF ALL CUSTODY AND MAINTENANCE ORDERS, WHETHER ISSUED PURSUANT TO FEDERAL OR PROVINCIAL LEGISLATION.

With the high incidence of separation and divorce, and the increased mobility of the population across provincial boundaries, uniform standards concerning the recognition and enforcement of maintenance and custody orders are essential if these orders are to have any practical effect.

Vigorous and consistent enforcement of maintenance and custody orders is a matter to which Manitoba attaches a high priority. Although most of the Provinces have passed uniform reciprocal enforcement legislation dealing with maintenance and custody, there are serious discrepancies in the rules, practices, and procedures that exist throughout Canada which result in inefficient, and in some cases a total lack of, enforcement. For example, under the recent computerized Maintenance Enforcement Program implemented in Manitoba all orders of maintenance, whether issued pursuant to provincial legislation or divorce legislation, and whether issued within Manitoba or outside Manitoba, are automatically enforced by the Attorney-General's Department on behalf of the recipient of maintenance and legal counsel is provided by the Department to represent the recipient at no cost to the recipient. It is our understanding that we are the only Province which provides so complete a service.

Lack of enforcement is a problem recognized by the Law Reform Commission of Canada in its Study Paper entitled "Family Law: Enforcement of Maintenance Orders" published in 1976:

"By far the most pressing problem respecting maintenance orders is the very substantial percentage that are allowed to fall into arrears. As was said in The Family Court:

"It is well known that many court orders regulating family matters, and particularly orders for maintenance, go unheeded. It is estimated that some degree of default with respect to obligations arising under maintenance orders occurs in as many as 75 per cent of all orders".

Enforcement is further complicated by the delay and expense involved in registering and enforcing orders through a different court system each time either party affected by the order moves across provincial boundaries.

The various provinces also attach differing priorities to the reciprocal enforcement of maintenance procedures resulting in still further inconsistencies and problems. Therefore, it is Manitoba's position that there should be a federal enforcement system to overcome these discrepancies and difficulties.

The history behind reciprocal enforcement of custody orders has been even more problem-ridden. Despite the fact that, with the exception of Quebec and Ontario, all the provinces have adopted uniform legislation for enforcing extra-provincial custody orders, this legislation is rarely utilized. Only in

Manitoba will the Department of the Attorney-General provide legal counsel for the purpose of administering and enforcing this legislation, and despite requests made by the Attorney-General for Manitoba, the other jurisdictions have refused to take an active role with respect to the problem of civil abduction of children. This reluctance and lack of co-operation on the part of the other jurisdictions in an area as serious as child abduction has rendered the uniform legislation ineffective in practice.

As shown above, the concept of "uniform" legislation in the area of enforcement, to be adopted by each individual province, has several inherent limitations; not all provinces have adopted this legislation and even where it has been adopted, serious discrepancies have arisen in its application. For this very reason Manitoba maintains that not only should divorce remain within federal jurisdiction, but federal jurisdiction should be expanded to provide uniform and consistent enforcement of maintenance and custody orders within the country.

An additional and obvious problem related to enforcement is the lack of information and resources available to the provinces to assist in locating defaulting spouses and abducted children. At present, most efforts to locate such persons are fragmented and uncoordinated throughout Canada, and as a result are largely unsuccessful.

Manitoba proposes, as a solution to these problems, federal legislation which would empower the Federal Government to establish a centralized system of registration and enforcement for all orders issued pursuant to either federal or provincial legislation. The power to administer the legislation would be delegated to the provinces.

To illustrate, under such a system a Central Registry would be established by the Federal Government, with a network of subsidiary registries in each province. Once an order is obtained and registered in a subsidiary registry, it would automatically be registered in the Central Registry, and would have immediate legal effect throughout Canada without the necessity of further registration. Presently, there exists a Central Registry for Divorce Orders. Manitoba's proposal would extend this concept to include the registration of all orders of custody and maintenance and, more importantly, would provide a centralized system for monitoring and enforcing such orders. The proposed federal system of enforcement would establish uniform standards, procedures and remedies applicable throughout the country.

An integral part of the centralized registry would be the establishment of a federal-provincial information bank to facilitate the prompt and efficient tracing of defaulting spouses and abducted children.

The Coalition on Family Law in Manitoba, in a brief presented to the Committee on Constitutional Review in Ottawa on February 1st, 1980, stated:

"In the opinion of the Coalition, it is even more important to consider the effect of the proposed transfer (of divorce jurisdiction) on the enforcement of custody and maintenance orders. In this area, we believe that even more federal jurisdiction should be provided. Moving out of the jurisdiction in which an order is made to prevent its enforcement is all too common and too easy to do. Remedy is supposedly available through reciprocal agreements between the provinces, but, at best, this method is unwieldy, cumbersome and expensive. In many provinces, the out-of-province spouse must locate the defaulting or kidnapping spouse, at her/his own expense, serve the papers and hire a lawyer in the second Province. Clearly, this is beyond the means of the average citizen... We need laws with teeth in them to remedy this situation and they must be applicable across Canada... What is needed is federal involvement".

The Law Reform Commission of Canada called a meeting in Ottawa to discuss Interprovincial Enforcement of Maintenance Orders on May 30th, 1980. This meeting was attended by provincial representatives of the Family Law Sections of the Canadian Bar Association. This group recommended as follows:

"whatever disposition is made of legislative jurisdiction over marriage and divorce, there ought to remain some federal umbrella enforcement provisions in Canada's Constitution so that Parliament could make laws for enforcement throughout Canada".

It is interesting to note that every provincial Family Law Subsection was represented at this meeting and that the recommendation was unanimous.

IV. MANITOBA RECOMMENDS THAT THE CONSTITUTION BE AMENDED TO PERMIT THE LEGISLATURES OF THE PROVINCES TO APPOINT JUDGES WITH JURISDICTION TO DEAL WITH ALL MATTERS RELATED TO FAMILY LAW, TO FACILITATE THE ESTABLISHMENT OF A UNIFIED FAMILY COURT SYSTEM.

As several levels of courts are presently involved in dealing with the numerous issues arising in the area of family law, a fragmented and uncoordinated approach to family law has resulted. It is clearly desirable that all aspects of family law be dealt with in one Court. This consolidation of family matters within a unified court would be the single most effective means of ensuring the proper and efficient enforcement of family related orders throughout the country, and is the logical mechanism for the implementation of the federal enforcement system proposed under Heading III of this paper.

Provincially appointed judges presently have jurisdiction with regard to family matters arising under provincial legislation. It is Manitoba's position that provincially appointed judges should have the additional jurisdiction to deal with matters arising under federal legislation in the area of family law. Thus, one forum will be empowered to deal with the whole range of legal issues arising in the family context.

V. ANALYSIS AND CRITICISM OF ARGUMENTS ADVANCED IN SUPPORT OF A
TRANSFER OF DIVORCE JURISDICTION TO THE PROVINCES.

The following are the major arguments being advanced in support of a transfer of federal divorce jurisdiction, with Manitoba's response to those arguments.

(a) 'Divorce is a matter of local concern and should therefore be dealt with at the provincial level.'

Quebec and the federal government have advanced the argument that divorce is essentially a matter of local concern and therefore should be dealt with at the provincial level in order that the law reflect local social and cultural values. It is argued that the family is the basic unit of any society and that the family is very much a local institution which requires legal protection. Therefore, the argument continues, it should be possible for the Provinces to legally enact a complete and coherent set of laws in keeping with the real nature of the modern family. This argument ignores the high degree of mobility of the Canadian population and in fact ignores the higher degree of mobility of a "modern" family that has separated.

This issue has been more fully considered under Heading II of this paper. Manitoba reiterates that the compelling need in the area of divorce law is the need for consistency and uniformity throughout the country and this need overrides the concern that divorce law reflect local social and cultural values.

(b) 'It is desirable that legislation with respect to corollary relief be uniform, whether the parties concerned are separated or divorced, and therefore jurisdiction with respect to both divorce and separation should rest with the provinces.'

Ontario has argued in support of the transfer of divorce jurisdiction that the present overlap of federal and provincial legislation in the areas of maintenance and custody can lead to a costly and unwarranted relitigation in family matters:

"Because the Divorce Act includes custody provisions, spouses are encouraged to relitigate a custody dispute that has already been determined under provincial law. They do not have to establish a material change of circumstance since the making of the custody order, as the divorce court is not bound to follow the previous decision under provincial law."

"An added incentive to relitigate is the fact that the test for custody under the Divorce Act emphasizes different factors than provincial laws - 'the conduct of the parties and the condition, means and other circumstances of each of them' rather than the best interests of the children."

Although in theory this argument has apparent merit, it is unjustified as it ignores the existing practice. Professor

Julien D. Payne of the University of Ottawa has exposed the frailty of this argument:

"I have digested several thousand reported decisions under the Divorce Act which consistently ignore the language of the statute by looking directly to the "welfare" or "best interests" of the child as the decisive factor. To assert that the language of the Divorce Act should be amended to accord with judicial practice is valid. But to suggest that the statutory formula provides an "added incentive to litigate" is nonsense. The further suggestion that the Divorce Act makes it possible for a parent who lost to have the matter relitigated ignores the realities. No self-respecting Court in Canada will blithely ignore the original order... It is well recognized that existing support orders and separation agreements that define maintenance rights and obligations are not to be lightly ignored by the Divorce Court. A heavy onus rests with a spouse who seeks to disturb the terms of a subsisting order or separation agreement. And where an existing provincial order of separation agreement is by-passed, this reflects a material change in circumstances of the parties. The dissolution of marriage may, of course, necessitate a re-assessment of the financial rights and obligation of the parties...There is no reason whatsoever why any court should or would feel compelled to determine the right to and quantum of maintenance, in a different way according to which statutory financial formula governed."

The need for uniform and consistent divorce laws throughout the country is a compelling argument in favour of retention of divorce jurisdiction by the federal government and this concern far outweighs the theoretical argument advanced by Ontario and outlined above.

(c) 'In light of the problems which arise where several levels of courts deal with family related matters, a uniform family court is desirable and this can best be achieved by way of transfer of divorce jurisdiction.'

This argument has been presented by Ontario as follows:

"The transfer of federal divorce jurisdiction to the provinces, coupled with the amendment of Section 96 of the British North America Act, would permit the provinces to appoint judges to deal with all family law matters."

As discussed under Heading IV of this paper, Manitoba agrees that a unified family court is desirable, and has in fact recommended that the constitution be amended to allow provincially appointed judges to deal with all matters related to family law. This, however, can be achieved by merely amending Section 96 of the British North America Act; it does not necessitate or warrant a transfer of legislative jurisdiction over divorce. The two distinct aspects of administrative jurisdiction and legislative jurisdiction must not be confused.

(d) 'The present federal divorce legislation does not reflect current needs and values and the federal government has not been responsive to these needs in the past.'

It is argued by several provinces that as the present divorce legislation is out-moded in several respects, and as the federal government has neglected to act upon the recommendations of the Law Reform Commission of Canada and other interest groups requesting reform of this legislation, jurisdiction in this area should be taken away from the federal government.

Manitoba agrees that there are several areas in the present divorce legislation, such as the grounds for divorce and the variation of existing orders, which require legislative reform. This, however, does not require a transfer of jurisdiction creating numerous divorce laws throughout the country; the obvious solution is to exert pressure on the federal government to amend the Divorce Act to reflect the present needs of the Canadian people.

(e) 'To circumvent the problems of inconsistency and lack of uniformity which could result from a transfer of divorce jurisdiction to the provinces, it has been suggested that such a transfer take place on the understanding that each province will pass uniform legislation in certain crucial areas.'

Ontario has recognized that uniformity and consistency are essential in divorce legislation, and has proposed the following:

There must be a clear undertaking that all provinces will offer to their citizens, by way of amendment to provincial legislation, at least the level of benefits that exist at present with respect to corollary relief under the Divorce Act...

The suggestion is that the provinces "undertake" to enact uniform legislation in certain problem areas to accommodate the need for uniformity. Not only has the issue of such an undertaking not been discussed by the provinces, there has been no discussion or agreement as to what might be considered "problem areas" requiring uniformity. The history of the existing "uniform" legislation in Canada dealing with enforcement of maintenance and custody orders exposes the serious flaw in the proposal that jurisdiction be transferred in the hope that uniformity will somehow be achieved by agreement. Under Headings II and III of this paper, the problems which have arisen as a result of contradictory and inconsistent approaches to the purportedly uniform legislation in the area of enforcement have been discussed. It is interesting to note that although most provinces have at least adopted uniform legislation pertaining to enforcement of maintenance and custody orders, Ontario has chosen to enact its own legislation which deviates significantly from the uniform legislation.

In light of the experience with the existing uniform legislation, it is unrealistic to expect the Provinces to approach the area of divorce legislation with any greater consistency and uniformity.

VI. CRITICISM OF THE MOST RECENT FEDERAL PROPOSAL CONCERNING
INTER-PROVINCIAL ENFORCEMENT.

In a public statement issued on July 8, 1980, the Honourable Jean Chretien has recognized that the proposed transfer would have serious ramifications with regard to inter-provincial enforcement:

We should ask ourselves whether the transfer of jurisdiction over orders ancillary to divorce would improve enforcement of these orders, particularly when the parties are in different provinces. If it does not, then we clearly have an obligation to search for better ways to ensure enforcement. Among the options that we might explore in regard to ancillary orders arising out of separation or divorce, are the following: 1). federal jurisdiction over enforcement of extra-provincial orders; 2). a constitutional provision requiring enforcement of extra-provincial orders; by that I have in mind that orders made in one province would be enforceable in another province because the Constitution required it.

The most recent draft proposals supported by the federal government contain the following provisions dealing with enforcement:

3. An order for maintenance or custody made in Canada has legal effect throughout Canada.
4. An order referred to in section 3 made in any province or territory may be registered in any other province or territory in a court of competent jurisdiction and shall be enforced in like manner as an order of that court.
5. The legislatures of the provinces may make laws to give effect to the provisions of sections 3 and 4 and may make laws providing for the variation and non-enforcement of orders by reason of a change in circumstances and, in addition, for the non-enforcement of orders on grounds of public policy or lack of due process of law.

These proposals are clearly a regressive step. Clauses 3 and 4 are similar to the present sections 14 and 15 of the Divorce Act. However, the proposed clause 5, in allowing each legislature to pass laws providing for variation and non-enforcement of orders on very general grounds such as public policy, undermines any effect clauses 3 and 4 might otherwise have.

Manitoba agrees that the present subsection 11(2) of the Divorce Act, which forces the parties to make any application for a variation of an order to the court granting the original order, should be amended to provide for variations by other courts in appropriate circumstances. However, amendment of the Divorce Act is all that is necessary; it is not appropriate for this type of provision to be entrenched in a constitution.

Our greatest concern with the proposed clause 5 is that it would enable a province to pass legislation to avoid enforcing an order of another province on the grounds that it is contrary to the public policy of the legislating province.

For example, where a common law wife residing in Manitoba has a maintenance order and her common law husband is residing in Saskatchewan, this order might not be enforceable in Saskatchewan on the grounds that it was based on Manitoba laws which are contrary to Saskatchewan public policy.

As a further example, in one province conduct such as adultery might be a bar to receiving maintenance, whereas in another province, maintenance is based solely on the need of the party seeking support. The proposed clause 5 could be interpreted to allow the first province to refuse to enforce an order obtained in the second, although that order was granted in accordance with the laws of the second province.

As a final illustration of this problem, Manitoba has enacted provisions whereby a father of an illegitimate child has an equal right to apply for guardianship of his child - the sole issue before the court is what is in the best interests of the child. This might well be contrary to the public policy of another province. It is foreseeable that, subsequent to the granting of a custody order in favour of the father of an illegitimate child by a Manitoba court, the mother, in violation of this order, might abduct the child to a province which, for reasons of public policy, could refuse to enforce the valid Manitoba custody order.

In his opening remarks, Mr. Chretien stated:

"While the solution to the problem (enforcement of maintenance and custody orders) does not lie wholly (or even mainly) in constitutional change, we must be certain that what we do will improve and not worsen the present situation. It is not enough that we do not make things worse. We must make them better than they are now."

These proposals would, in fact, "make things worse"! Under the Divorce Act and the existing reciprocal enforcement of maintenance legislation, courts are presently required to enforce a valid final order from another province upon its registration. The courts have no jurisdiction to go behind such an order and question the grounds on which it was made. To ensure effective enforcement of inter-provincial orders, at the very least the provisions for enforcement as set out in sections 14 and 15 of the Divorce Act should be maintained in full effect. The qualification of these provisions implicit in the proposed clause 5 would so weaken the system of inter-provincial enforcement that the result would be disastrous. This latest proposal could create the new problem of forum shopping for more favourable enforcement laws!

Manitoba continues to be of the opinion that the appropriate solution to the problems arising in inter-provincial enforcement of orders is the expansion of federal jurisdiction as discussed in detail in Part III of this paper.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Notes for a Statement
by the
Prime Minister of Canada
on the
Supreme Court of Canada

Ottawa
September 8-12, 1980

SUPREME COURT OF CANADA

The next item on the agenda is the Supreme Court.

The role of the Supreme Court of Canada as the final interpreter of the laws by which we are governed, including the Constitution, makes it one of the principal institutions of our Federation. Over the 105 years of its existence, it has functioned in a way that has earned the respect of Canadians everywhere.

At present the Constitution makes no provision for a Supreme Court other than to give Parliament a power to establish one and to define its jurisdiction. Thus the structure and jurisdiction of the court are provided for by a federal statute, and its judges are appointed by the federal government.

Because of its position as one of the central institutions of the Canadian Federation, we feel that it is appropriate and indeed necessary that the existence and jurisdiction of the Supreme Court should be guaranteed in the Constitution. Such a change, of course, involves a decrease in federal authority. But we think that is appropriate having in mind the role the Supreme Court plays as one of the key institutions of our federation.

The federal position on this question has been that it would consider any reasonable proposals which receive substantial support from the provinces.

I am prepared to support the entrenchment in the Constitution of the Supreme Court and of its essential jurisdiction even though this constitutes a decrease in federal authority.

I am prepared to accept the participation of the provinces in the appointment of Supreme Court judges. The CCMC proposal goes much further in this regard than many proposals. The proposal would require the federal Minister of Justice to obtain the consent of the appropriate provincial Attorney General before making an appointment. I am willing to accept this transfer of authority to the provinces providing a simple deadlock-breaking mechanism is included to provide for cases in which the two Ministers do not agree.

I am prepared to accept the increased authority granted to the provinces with respect to references. The CCMC draft accords to provincial governments authority equal to that presently held by the federal government. We agree that it is appropriate to extend provincial authority in this way.

The draft also provides for increased provincial involvement in the framing of laws governing the operation and management of the Court with respect to those

aspects of the organization and operation of the Court not entrenched in the Constitution. This is acceptable to us. It reflects the fact that provinces have an important interest in the operation of the Court which is the highest court of appellate jurisdiction not only for constitutional but also for federal and provincial laws.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Notes for a Statement
by the Prime Minister
of Canada on Fisheries

Ottawa
September 8-12, 1980

FISHERIES

The Constitution of Canada gives responsibility for the fisheries to the Government of Canada. Down through the years, the fisheries off our coasts have been administered directly by the federal government, while at the same time the inland fisheries have, in most cases, been administered by the provinces operating under federal legislation.

Most of the provinces have been asking for major changes in these arrangements:

- On the seacoast and marine fisheries, nine of ten provinces want at least concurrent jurisdiction given to the provinces. One major fishing province is strongly opposed to this.
- On inland fisheries, nine of ten want exclusive jurisdiction given to them.
- On marine and aquatic plants, nine of ten provinces want exclusive jurisdiction.
- On sedentary species such as oysters, all ten want exclusive jurisdiction.
- On aquaculture, i.e., fish farming, all ten want exclusive jurisdiction.
- On the anadromous species such as salmon, nine of ten want major powers given to them.

What is the position of the federal government on all this?

- On the seacoast and marine fisheries, we have said no, we think it would be wrong to have concurrent jurisdictions, but we have offered to have much closer consultation - and have even offered to write a mandatory provision to that effect into the new Constitution.
- On inland fisheries, we are ready to give this to the provinces because, generally, they are doing it now and doing it well. More important, most of these fisheries lie within a single province. We will want to make sure in doing this that native rights are protected, and that we can still protect fish habitat in interprovincial and international waters. Otherwise, we are responding fully to the wishes of the provinces who want this jurisdiction. We think a new constitutional arrangement along these lines will make sense for the fisheries concerned, the provinces, and the national interest too.
- On marine and aquatic plants, we have said no to the provinces, because of our concern about protecting the plants which are so often a major part of the habitat of seacoast species. We are ready, however, to look at this once again, because we think a compromise in the interests of everyone may be possible.
- On sedentary species, we are ready to give the provinces the jurisdiction they seek.
- On the anadromous species, we are not prepared to go along, for reasons I will mention shortly.

It seems to me that, for a government which was asked to give up the exclusive jurisdiction it has held since Confederation over a most important aspect of Canadian life, the list of the positive responses which I have just read to you, is indicative of considerable flexibility on our part.

Government
Publications

NOTES
FOR STATEMENTS BY
STERLING LYON
PREMIER OF MANITOBA
AND
GERRY MERCIER
ATTORNEY GENERAL OF MANITOBA
CONCERNING
FAMILY LAW.



THE FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION
9 SEPTEMBER 1980.

PRIME MINISTER:

I CAN SUMMARIZE QUICKLY MANITOBA'S POSITION ON THE PROPOSED TRANSFER OF JURISDICTION FOR DIVORCE AND SUCH RELATED MATTERS AS MAINTENANCE AND THE CUSTODY OF CHILDREN, FROM THE FEDERAL GOVERNMENT, TO THE PROVINCES.

MANITOBA OPPOSES IT. WE HAVE ALWAYS OPPOSED IT. WE WILL CONTINUE TO OPPOSE IT.

IN THIS POSITION, WE ENJOY THE SUPPORT OF THE CANADIAN BAR ASSOCIATION, THE NATIONAL COUNCIL OF WOMEN, THE NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN, AND VIRTUALLY EVERY OTHER GROUP WHICH IS FAMILIAR AND CONCERNED WITH THE IMPORTANT AREA OF LAW.

A GREAT MANY OF THE OTHER GOVERNMENTS REPRESENTED HERE HAVE RECEIVED REPRESENTATIONS FROM THESE AND OTHER GROUPS ACROSS CANADA - REPRESENTATIONS THAT ARE CLEAR IN WARNING THAT ANY SUCH TRANSFER OF JURISDICTION WOULD BE A SERIOUS AND A TRAGIC MISTAKE.

I WOULD SUGGEST, PRIME MINISTER, THAT IF THERE IS A "PEOPLE'S" ISSUE BEFORE THIS CONFERENCE, AN ISSUE THAT AFFECTS THOUSANDS OF CANADIANS, INCLUDING THOUSANDS OF CHILDREN, IN A DIRECT AND CRITICAL WAY, IT IS THIS QUESTION OF FAMILY LAW.

AND LEST THERE BE ANY MISUNDERSTANDING, IN OUR PROPOSALS WE ARE RECOMMENDING - NOT AN INCREASE - BUT A DECREASE IN THE POWERS OF THE PROVINCIAL GOVERNMENTS, COMBINED WITH A CONTINUED ADMINISTRATIVE RESPONSIBILITY FOR THE PROVINCES. WE ARE NOT ATTEMPTING TO AVOID OUR OWN RESPONSIBILITIES. WE ARE ATTEMPTING TO PERSUADE YOU AND THE OTHERS AROUND THIS TABLE THAT THE BEST INTERESTS OF CANADIANS CAN BE SERVED BY AN EXPANSION OF FEDERAL JURISDICTION OVER FAMILY LAW, SO AS TO PROVIDE ALL CANADIANS WITH CONSISTENCY AND UNIFORMITY IN THIS CRITICAL AREA OF LAW, REGARDLESS OF WHERE THEY MAY BE IN CANADA.

OUR POSITION, AND OUR COUNTER PROPOSALS FOR EXPANDED FEDERAL JURISDICTION OVER FAMILY LAW, ARE SET OUT CLEARLY I THINK IN OUR POSITION PAPER WHICH IS BEING CIRCULATED TO ALL DELEGATES. BUT I WOULD ASK ATTORNEY GENERAL, GERRY MERCIER, TO SET FORTH THAT POSITION, AND THOSE PROPOSALS, FOR YOUR CONSIDERATION.

PRIME MINISTER:

AMID THE CONTROVERSY THAT HAS SURROUNDED SOME DISCUSSIONS OF SOME OF THE ITEMS ON OUR AGENDA THROUGHOUT THIS SUMMER'S CONTINUING CONSTITUTIONAL MEETINGS, FAMILY LAW HAS RECEIVED RELATIVELY LITTLE PUBLIC ATTENTION, EXCEPT FROM THOSE INVOLVED IN THE PRACTISE OF LAW IN THIS FIELD, AND FROM THOSE ORGANIZATIONS WHO SPEAK ON BEHALF OF WOMEN IN ALL OUR PROVINCES.

I THINK IT MIGHT BE USEFUL HERE TO SUMMARIZE JUST WHAT IS INVOLVED IN THE FEDERAL PROPOSAL TO ABANDON ITS JURISDICTION OVER DIVORCE AND RELATED MATTERS.

AT THE PRESENT TIME, AS YOU KNOW, DIVORCE IS A MATTER OF FEDERAL JURISDICTION: GROUNDS FOR DIVORCE, MAINTENANCE AND CUSTODY OF CHILDREN AS A RESULT OF DIVORCE, AND THE ENFORCEMENT OF ORDERS RELATED TO THESE MATTERS, REST WITH THE FEDERAL GOVERNMENT.

ENFORCEMENT OF CHILD CUSTODY AND MAINTENANCE ORDERS RESULTING FROM LEGAL SEPARATIONS ARE MATTERS OF PROVINCIAL JURISDICTION.

THE FEDERAL PROPOSAL, IN ESSENCE, WOULD RESULT IN ALL OF THESE MATTERS BECOMING MATTERS OF PROVINCIAL JURISDICTION.

I WOULD SUGGEST THAT THERE IS ONE CENTRAL QUESTION THAT WE MUST ANSWER IN EVALUATING THIS PROPOSAL. THAT QUESTION IS: WHAT WOULD SUCH A SHIFT OF JURISDICTION MEAN FOR CANADIANS IN PRACTICAL TERMS?

AND I SUGGEST THE BEST WAY TO ANSWER THAT QUESTION IS TO LOOK AT THE AREAS THAT ARE ALREADY UNDER PROVINCIAL JURISDICTION: JUST HOW WELL DOES IT ALL WORK? HOW WELL ARE THE RIGHTS OF PEOPLE PROTECTED?

WE ALL KNOW IT DOESN'T WORK VERY WELL AT ALL, MR. CHAIRMAN. THE LAW REFORM COMMISSION OF CANADA ESTIMATES THAT FULLY 75% OF ALL MAINTENANCE ORDERS ISSUED IN ALL PROVINCES ARE NOT ENFORCED. AND THERE ARE LITERALLY HUNDREDS OF CASES OF ABDUCTION OF CHILDREN, ACROSS PROVINCIAL BOUNDARIES, IN DEFIANCE OF CUSTODY ORDERS, IN CANADA EVERY YEAR.

WE CAN TRY - AND IN MANITOBA WE HAVE TRIED - TO RESPOND TO THESE PROBLEMS. AND I WOULD REMIND YOU THAT THESE ARE NOT PROBLEMS OF ABSTRACT LEGAL CONCERN: THESE ARE PROBLEMS THAT AFFLICT PEOPLE IN ALL OUR PROVINCES, INCLUDING MANY CHILDREN.

LET ME TELL YOU OF SOME OF THE SPECIFIC STEPS WE HAVE ALREADY TAKEN IN MANITOBA.

TO ACHIEVE BETTER ENFORCEMENT OF MAINTENANCE ORDERS - ORDERS REQUIRING THE PAYMENT OF FAMILY SUPPORT - WE HAVE ESTABLISHED A COMPUTERIZED MAINTENANCE ENFORCEMENT PROGRAM. OUR DEPARTMENT OF THE ATTORNEY GENERAL AUTOMATICALLY ENFORCES ALL MAINTENANCE ORDERS, WHETHER THEY ARE ISSUED AS A RESULT OF SEPARATION OR DIVORCE, WHETHER THEY ARE ISSUED BY OUR COURTS, THE COURTS OF OTHER PROVINCES, OR THE COURTS OF RECIPROCATING JURISDICTIONS OUTSIDE OF CANADA.

TO ACHIEVE SUCH ENFORCEMENT, WE PROVIDE FREE LEGAL COUNSEL TO ALL RECIPIENTS OF MAINTENANCE IN THE ENFORCEMENT OF ORDERS.

I BELIEVE WE ARE THE ONLY PROVINCE TO OFFER THIS KIND OF COMPREHENSIVE SERVICE IN THIS IMPORTANT AREA.

WE ALSO PROVIDE FREE LEGAL COUNSEL FOR THE ENFORCEMENT OF CHILD CUSTODY ORDERS GRANTED IN ANY OTHER JURISDICTION. BY PROVIDING CROWN COUNSEL IN THESE CASES - ESSENTIALLY CASES WHERE CHILDREN HAVE BEEN ABDUCTED TO MANITOBA IN DEFIANCE OF CUSTODY ORDERS GRANTED ELSEWHERE - WE HAVE BEEN ABLE TO ACHIEVE PROMPT RETURN OF SUCH CHILDREN TO THEIR HOMES.

WE HAVE TAKEN A NUMBER OF OTHER STEPS, AS WELL, MR. CHAIRMAN: WE HAVE NEGOTIATED RECIPROCAL ARRANGEMENTS FOR THE ENFORCEMENT OF MAINTENANCE ORDERS WITH MORE U.S. STATES THAN ANY OTHER CANADIAN PROVINCE. WITH THE CO-OPERATION OF THE FEDERAL MINISTER OF JUSTICE,

WE ARE WORKING TO OBTAIN THE RELEASE OF FEDERAL INFORMATION TO ASSIST IN THE LOCATION OF PERSONS DEFAULTING ON SUCH FAMILY AND CHILD SUPPORT RESPONSIBILITIES, AND IN THE LOCATION OF ABDUCTED CHILDREN.

WITHIN MANITOBA, THESE MEASURES HAVE MATERIALLY IMPROVED THE PROTECTIONS AVAILABLE TO OUR PEOPLE. BUT WHEN WE ATTEMPT TO REACH BEYOND OUR PROVINCIAL BOUNDARIES, MR. CHAIRMAN, THE RESULTS OF EVEN THESE EXTENSIVE MEASURES BECOME LESS CLEAR.

AT THE PRESENT TIME, THERE IS WHAT IS CALLED "UNIFORMITY OF LEGISLATION" AMONG THE PROVINCES WITH RESPECT TO THE INTER-PROVINCIAL ENFORCEMENT OF MAINTENANCE AND CHILD CUSTODY ORDERS. BUT IN PRACTICAL TERMS, WHAT EXISTS IS FAR FROM A UNIFORM SITUATION.

DIFFERENCES IN PRIORITIES AND APPROACHES AMONG THE PROVINCES RESULT IN VERY REAL DISCREPANCIES IN STANDARDS AND PROCEDURES THROUGHOUT THE COUNTRY.

NO OTHER PROVINCE, FOR EXAMPLE, WILL OFFER TO MANITOBIANS THE SAME LEGAL ASSISTANCE IN THE RECOVERY OF ABDUCTED CHILDREN THAT WE OFFER TO ALL, REGARDLESS OF WHERE THEY LIVE.

NOT ALL PROVINCES WILL OFFER TO MANITOBIANS THE SAME LEGAL ASSISTANCE IN THE ENFORCEMENT OF MAINTENANCE ORDERS THAT WE OFFER TO ALL CANADIANS.

IN THE LIGHT OF THESE KINDS OF DISCREPANCIES, WHAT WOULD BE THE LIKELY RESULT OF A FEDERAL DECISION TO ABANDON ITS JURISDICTION OVER DIVORCE AND RELATED MATTERS?

THE RESULTS, MR. CHAIRMAN, WOULD ALMOST CERTAINLY BE CHAOTIC.

WE WOULD FACE THE ALMOST CERTAIN EMERGENCE OF INCONSISTENT GROUNDS FOR DIVORCE AMONG THE PROVINCES. WE WOULD FACE SIMILAR INCONSISTENCIES WITH RESPECT TO MAINTENANCE AND THE CUSTODY OF CHILDREN. WE WOULD ENCOUNTER THE SAME DIFFICULTIES IN ENFORCING MAINTENANCE AND CUSTODY ORDERS RESULTING FROM DIVORCE THAT WE ALREADY FACE WITH RESPECT TO THE ENFORCEMENT OF PROVINCIAL ORDERS.

WE WOULD FACE, AS WELL, SERIOUS INEQUITIES. THOSE WITH FINANCIAL RESOURCES COULD AFFORD TO MOVE, TO TAKE ADVANTAGE OF RELATIVELY LIBERAL OR ADVANTAGEOUS PROVINCIAL DIVORCE PROVISIONS, WHILE THOSE WITH LOWER INCOMES WOULD ENJOY NO SUCH ACCESS TO THESE ADVANTAGES.

MR. CHAIRMAN, THE PARAMOUNT CONCERN IN THE AREA OF DIVORCE LAW MUST BE CONSISTENCY AND UNIFORMITY ACROSS CANADA. THAT IS MORE URGENT NOW THAN EVER IN OUR PAST, BECAUSE OUR PEOPLE ARE BECOMING MORE MOBILE: MORE PEOPLE ARE MOVING MORE OFTEN BETWEEN PROVINCES, AND THE RATES OF MOBILITY, ACCORDING TO STATISTICS CANADA, ARE HIGHEST AMONG THOSE WHO ARE EITHER SEPARATED OR DIVORCED.

WE HAVE TALKED IN OUR CONSTITUTIONAL DISCUSSIONS OF THE NEED FOR PEOPLE TO BE ABLE TO MOVE FREELY THROUGHOUT CANADA.

TO ASSURE THAT CANADIANS CAN MOVE FREELY THROUGHOUT THIS COUNTRY, WHILE STILL PROTECTING THE FAMILY - WHICH IS THE BASIC UNIT OF OUR CANADIAN SOCIETY - IT IS MANDATORY THAT THERE BE A FEDERAL DIVORCE LAW PROVIDING UNIFORMITY OF GROUNDS FOR DIVORCE, MAINTENANCE AND CHILD CUSTODY ORDERS RESULTING FROM DIVORCE, AND THE ENFORCEMENT OF SUCH MAINTENANCE AND CHILD CUSTODY ORDER ALL OVER CANADA.

THE EXPERIENCE OF THE SO-CALLED "UNIFORMITY OF LEGISLATION" WITH RESPECT TO INTER-PROVINCIAL ENFORCEMENT OF PROVINCIAL MAINTENANCE AND CHILD CUSTODY ORDERS, MAKES IT CLEAR THAT IT WOULD BE NAIVE TO EXPECT THAT WE COULD ACHIEVE THIS NECESSARY NATIONAL CONSISTENCY IN DIVORCE LAWS IF THEY ARE PASSED TO THE INDIVIDUAL JURISDICTIONS OF THE PROVINCES.

THAT WOULD MERELY COMPOUND THE PROBLEMS THAT ALREADY EXIST. AND IT WOULD BE IRONIC, MR. CHAIRMAN, FOR CANADA TO MOVE IN THIS DIRECTION AT THE VERY TIME THAT AUSTRALIA AND THE UNITED STATES ARE MOVING IN PRECISELY THE OPPOSITE DIRECTION AS A RESULT OF THEIR OWN UNSATISFACTORY EXPERIENCE WITH THE INCONSISTENCIES ARISING FROM STATE JURISDICTION OVER THESE IMPORTANT AREAS OF LAW.

IN FAIRNESS, MR. CHAIRMAN, IT SHOULD BE SAID THAT, IN THE MOST RECENT FEDERAL PROPOSALS, THERE IS AT LEAST AN EFFORT TO ADDRESS SOME OF THESE CONCERNS. SPECIFICALLY, THE NEW FEDERAL PROPOSAL WOULD PROVIDE FOR NATIONAL ENFORCEMENT OF ORDERS ISSUED BY ANY COURT, IN ANY PROVINCE.

BUT THOSE PROPOSALS WOULD ALSO PROVIDE THAT ANY PROVINCE COULD, ON THE BASIS OF - AND I AM QUOTING - "CHANGE OF CIRCUMSTANCES, GROUNDS OF PUBLIC POLICY, LACK OF DUE PROCESS OF LAW" - COULD VARY OR REFUSE TO ENFORCE ORDERS GRANTED ELSEWHERE.

LET ME GIVE YOU JUST ONE EXAMPLE OF THE PRACTICAL IMPLICATIONS OF THIS PROVISION.

IN ONE PROVINCE, MARRAIGE FAULT, SUCH AS ADULTERY LEADING TO DIVORCE, COULD BE CONSIDERED A BAR TO MAINTENANCE. IN ANOTHER, WHERE DIVORCE AND MAINTENANCE WERE CONDUCTED ON A "NO FAULT" BASIS, IT MAY BE NO BAR TO MAINTENANCE. IN SUCH A SITUATION, WOULD THE FIRST PROVINCE REFUSE TO ENFORCE AN ORDER GRANTED IN THE SECOND? THAT WOULD BE ENTIRELY POSSIBLE UNDER THE PROPOSED FEDERAL PROVISION.

MR. CHAIRMAN, WE BELIEVE THE BEST INTERESTS OF CANADIANS WOULD BE BETTER SERVED BY A DECISION TO ADOPT THE FOLLOWING PROPOSAL:

1. WE RECOMMEND THAT THE PRESENT
FEDERAL JURISDICTION WITH RESPECT
TO DIVORCE BE RETAINED
2. WE RECOMMEND THAT FEDERAL
JURISDICTION BE EXPANDED TO
DEAL WITH THE ENFORCEMENT OF ALL
MAINTENANCE OR CHILD CUSTODY
ORDERS, WHETHER ISSUED AS A
RESULT OF SEPARATION OR DIVORCE
3. WE RECOMMEND THAT THE CONSTITUTION
BE AMENDED TO GIVE LEGISLATURES
OF THE PROVINCES THE POWER TO
APPOINT JUDGES WITH JURISDICTION
TO DEAL WITH ALL MATTERS RELATED TO
FAMILY LAW, TO FACILITATE THE
ESTABLISHMENT OF A UNIFIED FAMILY
COURT SYSTEM.

MR. CHAIRMAN, WE HAVE EXAMINED THE ARGUMENTS IN FAVOUR OF THE FEDERAL PROPOSAL CAREFULLY. IN OUR VIEW, THE NEED FOR PEOPLE ACROSS CANADA TO HAVE UNIFORM AND CONSISTENT LAWS WITH RESPECT TO DIVORCE, MAINTENANCE, AND THE CUSTODY OF CHILDREN, MUST OVERRIDE THOSE ARGUMENTS.

THE ARGUMENTS ADVANCED IN FAVOUR OF THE FEDERAL PROPOSAL PALE, MR. CHAIRMAN, WHEN COMPARED TO THE VERY HUMAN AND IMPORTANT RIGHTS THAT ARE AFFECTED BY THIS IMPORTANT BODY OF LAW: THE RIGHT OF SPOUSES TO CONTINUED SUPPORT; THE RIGHT OF PARENTS WHO HAVE BEEN GRANTED LEGAL CUSTODY OF CHILDREN TO RETAIN AND TO CARE FOR THOSE CHILDREN; THE RIGHT OF CHILDREN THEMSELVES TO HAVE SECURE AND LEGALLY PROTECTED HOMES, DESPITE DIVORCE OR SEPARATION.

WE URGE YOU, AND WE URGE OUR SISTER PROVINCES, TO MOVE TO PROVIDE CANADIANS WITH UNIFORM, CONSISTENT, AND EFFECTIVE LAWS IN THIS AREA, THROUGH AN EXPANSION OF FEDERAL JURISDICTION.

IN CLOSING, I WOULD LIKE TO QUOTE THE FEDERAL MINISTER OF JUSTICE, SPEAKING OF OUR DELIBERATIONS ON THIS IMPORTANT SUBJECT,

THE MINISTER SAID "WE MUST BE CERTAIN THAT WHAT WE DO WILL IMPROVE AND NOT WORSEN THE PRESENT SITUATION. IT IS NOT ENOUGH THAT WE DO NOT MAKE THINGS WORSE. WE MUST MAKE THEM BETTER THAN THEY ARE NOW."

WE CONCUR WITH THAT STATEMENT. IN OUR OPINION, THE FEDERAL PROPOSALS WOULD MAKE THINGS WORSE - SIGNIFICANTLY WORSE - THAN THEY ARE NOW.

I REPEAT, MR. CHAIRMAN, IN OUR VIEW, THIS ISSUE IS A "PEOPLE" ISSUE, IF THERE IS ANY PEOPLE ISSUE BEFORE US. WE ARE NOT ARGUING ABOUT POWERS. WE ARE ARGUING ABOUT THE RIGHTS OF PEOPLE, INCLUDING CHILDREN, AND ABOUT THE BEST WAYS WE CAN PROTECT THOSE RIGHTS THROUGHOUT CANADA.

General

Laws, etc.
not to apply
so as to
derogate from
declared
rights and
freedoms

24. Any law, order, regulation or rule that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Laws
respecting
evidence

25. No provision of this Charter other than section 12 affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.

Application
to territories
and
territorial
institutions

26. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

Legislative
authority
not
extended

27. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.

Continuation
of existing
constitutional
provisions

28. Nothing in sections 17 to 19 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (*)

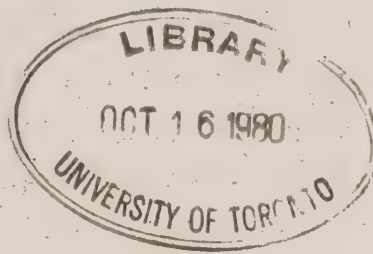
Application
of certain
language
rights

29. A legislature of a province to which subsections 18(2) and 19(2) do not expressly apply may declare that one or both of those subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named therein.

(*Transitional provisions will be required for repeal of these provisions at an appropriate time.)

Government
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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Legal Texts forming Appendices
to CCMC Reports to First Ministers

- Offshore Resources
- Equalization
- Charter of Rights

Ottawa
September 8-12, 1980

BEST EFFORTS DRAFT

OFFSHORE RESOURCES

Proprietary Rights

109.1 All lands, mines, minerals and royalties within and arising from the seabed and subsoil of internal waters, the territorial sea and the continental shelf* adjacent or appurtenant to any province and all economic or proprietary rights in the non-renewable natural resources thereof, (and all rights to produce energy from the water, current, tides and winds)** shall belong to the adjacent province.

109.2(1) The delimitation of the area adjacent or appurtenant to each Province shall as between adjacent or opposite Provinces, be that area within lines drawn by agreement in accordance with principles of international law.

109.2(2) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall resort to arbitration, one member of the Arbitration Board being chosen by each Province, and one other or two others in the case of an even number either by agreement of the members of the Board or failing agreement by the Chief Justice of the Supreme Court of Canada.

* The continental shelf referred to here includes the shelf, slope and rise to the limit of jurisdiction as determined from time to time by international law.

** Possible inclusion

CCMC

OFFSHORE RESOURCES

LEGISLATIVE JURISDICTION

(ADDITION TO BEST EFFORTS DRAFT
ON RESOURCE OWNERSHIP)

Proposed Revision - Section 92

92 (8) For purposes of this section "Province" includes the non-renewable natural resources of the seabed and subsoil of internal waters, the territorial sea and the continental shelf* adjacent or appurtenant to any province (and all rights of energy production from the water, currents, tides and winds.**)

* The continental shelf referred to here includes the shelf, slope and rise to the limit of jurisdiction as determined from time to time by international law.

** Possible inclusion

CCMC

BEST EFFORTS DRAFT

EQUALIZATION AND REGIONAL DEVELOPMENT

Government of
Quebec Proposal

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and,
- (c) providing essential public services of reasonable quality to all Canadians.
- (2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years.

Governments of Manitoba and
Saskatchewan Proposal
(including Quebec's Proposal)

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and,
- (c) providing essential public services of reasonable quality to all Canadians.
- (2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years.

Government of British
Columbia Proposal

96(1) Without altering the legislative authority or Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and,
- (c) providing essential public services of reasonable quality to all Canadians.
- (2) Parliament and the Government of Canada are committed to taking such measures as are appropriate to ensure that provinces are able to provide the essential public services referred to in S.96(1) (c) without imposing an undue burden of provincial taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the question and principles of such measures at least once every five years.

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian
Charter of
Rights and
Freedoms

1. The Canadian Charter of Rights and Freedom recognizes the following rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society.

Fundamental Freedoms

Fundamental
freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media; and
- (c) freedom of peaceful assembly and of association.

Democratic Rights

Democratic
rights of
citizens

3. Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Duration of
elected
legislative
bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date of the return of the writs for the election of its members.

Continuation
in special
circum-
stances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond the period of five years, if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual
sitting of
legislative
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Life, liberty
and security
of person

6. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.

Search and
seizure

7. Everyone has the right to be secure against unreasonable search and seizure.

Detention or
imprisonment

8. Everyone has the right not to be arbitrarily detained or imprisoned.

Invasion
of privacy

9. Everyone has the right to be secure against arbitrary invasion of privacy.

Arrest or
detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay; and

(c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

— Proceedings
against
accused in
criminal and
penal matters

11. Anyone charged with an offence has the right

- (a) to be informed promptly of the specific offence;
- (b) to be tried within a reasonable time;
- (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (d) not to be denied reasonable bail without just cause;
- (e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
- (f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
- (g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

Treatment or
punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-
crimination

13. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

Counsel

14. A witness has the right not to be compelled to testify if denied the right to consult counsel.

Interpreter

15. A party or witness has the right to the assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Mobility Rights (*)

Rights of
citizens

16. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of
citizens and
permanent
residents

(2) Every citizen of Canada and every person who has the status of a permanent resident has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence.

Non-discrimination Rights

Equality
before the
law and
equal
protection
of the law

17. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative
action
programmes

(2) This section does not preclude any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

(* This section is subject to revision in light of discussions in the "Powers over the Economy" committee respecting amendments to section 121 of the BNA Act.)

Official Languages

Official
languages
of Canada

18. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada. (*)

Status of
languages
and
extension
thereof

(2) In addition, English and French have the status set forth in this Charter, which does not limit the authority of Parliament or a legislature to extend the status or use of the two languages or either of them.

Language Rights

Proceedings
of Parliament

19. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Debates of
legislatures

(2) Everyone has the right to use English or French in the debates of the legislature of any province.

Statutes,
etc. of
Parliament

20. (1) The statutes, records and journals of Parliament shall be printed and published in English and French.

Statutes,
etc. of
certain
legislatures

(2) The statutes, records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

(* New Brunswick may wish special provision added respecting status of English and French in that province.)

Idem

(3) The statutes, records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

Both versions
of statutes
authoritative

(4) Where the statutes of Parliament or a provincial legislature are printed and published in English and French, both language versions are equally authoritative.

Proceedings
in Supreme
Court and
courts
established
by
Parliament

21. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court established by Parliament.

Proceedings
in courts
of certain
provinces

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick or Manitoba.

Idem

(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.

Rules for
orderly
implementa-
tion and
adaption

(4) Nothing in this section precludes the making of such rules by any competent body or authority for the orderly implementation and operation of this section.

Communications
by public
with govern-
ment of
Canada

22. (1) Any member of the public in Canada has the right to communicate with and to receive services from any head or central office of an institution of the Parliament or Government of Canada in English or French, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communications
by public
with govern-
ment of a
province

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or principal office of an institution of the legislature or government of the province in English or French to the greatest extent practicable accordingly as the legislature prescribes. (*)

Rights and
privileges
preserved

23. Nothing in sections 18 to 22 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

(* New Brunswick may wish special provision added respecting language of services to the public.)

Language of
educational
instruction

24. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Provisions
for deter-
mining where
numbers
warrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Undeclared Rights

Undeclared
rights and
freedoms

25. The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

General

Laws, etc.
not to apply
so as to
abrogate
declared
rights and
freedoms

26. Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Enforcement
of declared
rights and
freedoms

27. Where no other legal recourse or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty, as may be appropriate and just in the circumstances.

Application
to territories
and
territorial
institutions

28. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

Legislative
authority
not
extended

29. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.

Continuation
of existing
constitutional
provisions

30. Nothing in sections 19 to 21 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (*)

Application
of sections
20 and 21

31. A legislature of a province to which subsections 20(2) and 21(2) do not expressly apply may declare that one or both of those subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named therein.

(* Transitional provisions will be required for repeal of these provisions at an appropriate time.)

REVISED FEDERAL DRAFT ON MOBILITY RIGHTS

Rights
citizens
to move

16. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights
of persons
in Canada
to move,
etc.

(2) Everyone in Canada has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and pursue the gaining of a livelihood in, any province.

Limitations

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence, and

(b) any other laws referred to in subsections (4) or (5) of section 121 of the British North America Act.

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Government
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FEDERAL-PROVINCIAL CONFERENCE

OF

FIRST MINISTERS ON THE CONSTITUTION



Legal Texts forming Appendices
to CCMC Reports to First Ministers

- Supreme Court
- Family Law
- Fisheries

Ottawa
September 8-12, 1980

August 12, 1980

*The Supreme Court of Canada*Supreme Court
of Canada

1. There shall be a general court of appeal for Canada called the Supreme Court of Canada.

Constitution
of Court

2. The Supreme Court of Canada shall consist of eleven judges, who shall be appointed by the Governor General.

Eligibility
for
appointment

3. (1) A person is eligible to be appointed as a judge of the Supreme Court if, after having been admitted to the bar of any province, the person has, for a total period of at least ten years, been a judge of any court in Canada or a member of the bar of any province.

Appointment of
judges from
Quebec

(2) Five of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of that province or of a court established by Parliament or members of the bar of Quebec.

Designation of
Chief Justice
of Canada

4. (1) A chief justice, to be called the Chief Justice of Canada, shall be designated by the Governor General.

Alternate
designation

(2) The Chief Justice of Canada shall be designated for single term, alternatively, from among the judges appointed to subsection 3(2) and from among the other judges of the Supreme Court.

Term of office

(3) The term of office of a judge as Chief Justice of Canada expires seven years after the designation has effect or upon the judge attaining the age of retirement, whichever first occurs.

Procedure on
vacancy in
Court

5. (1) Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorneys General of all of the provinces and shall seek the consent of the Attorney General of the province of the person being considered for appointment as to the appointment of that person.

Procedure
where no
consent

(2) Where consent is not forthcoming, the Minister of Justice of Canada and the appropriate provincial Attorney General shall, together with [a person chosen by them or if they do not agree a person chosen by] the Chief Justice of Canada, determine the person to be recommended for appointment.

Tenure of
office of
judges of
court

6. (1) The judges of the Supreme Court hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries,
allowances and
pensions of
judges

(2) Parliament shall provide for the salaries, allowances and pensions of the judges of the Supreme Court.

[illegible]

7. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction.

8. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, where any question involved raises a constitutional issue.

9. An appeal to the Supreme Court lies from an opinion pronounced by the highest court established by Parliament on any constitutional question referred to it by the Governor General in Council

10. Parliament may make laws authorizing the Governor General in Council to refer questions of law or fact direct to the Supreme Court.

11. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any constitutional question referred to it by the Lieutenant Governor in Council of the province.

12. The legislature of a province may make laws authorizing the Lieutenant Governor in Council to refer questions of law or fact directly to the Supreme Court.

13. In addition to any appeal provided for by this Act, an appeal to the Supreme Court lies as may be provided by Parliament.

14. Parliament may make laws providing for the organization, maintenance and operation of the Supreme Court, and the effective execution and working of this division and the attainment of its intention and objects.

15. The Minister of Justice of Canada shall consult with the Attorneys General of the provinces in respect of proposals for laws referred to in sections 13 and 14.

Continuation of
Supreme Court
of Canada

XX. (1) The court existing immediately before the commencement of this Act under the name of the Supreme Court of Canada is continued as provided in this Act.

(2) The Chief Justice of Canada and other judges of the Supreme Court of Canada shall continue in office as though appointed and designated in the manner provided in this Act except that they shall hold office as judges or Chief Justice until attaining the age of seventy-five years.

(3) Until otherwise provided pursuant to this Act, all laws respecting the Supreme Court of Canada and the judges thereof that were in force immediately before the commencement of this Act shall continue, subject to this Act.

25. Jan. 96

- CCNC - 9 mins. supported

(b) indep of members of set

(c) enable a person
not to be a member of
an application of the law

(13) enabling the person of a
member in the application
of the law

1) provide that there shall not
be a direct application of the law

1) enable a person
not to be a member of
an application of the law

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1) enable a person
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The Supreme Court of Canada

Victoria Charter - Deadlock Breaking Mechanism

Art. 29. Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 30. Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

- (1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;
- (2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province, or if he is unable to act, the next senior Judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 31. When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada; a majority of the members of a council constitutes a quorum, and a recommendation of the majority of the members at a meeting constitutes a recommendation of the council

BEST EFFORTS DRAFTFAMILY LAW

1. Repeal head 26 of section 91 -- "Marriage and divorce".
2. Repeal head 12 of section 92 -- "The Solemnization of Marriage in the Province".
3. Add as new legislative authority provisions, the following sections:

Marriage
jurisdiction

"1. The legislature of each province may make laws in relation to marriage in the province, including the validity of marriage in the province, except that Parliament has exclusive authority to make laws in relation to the recognition of a declaration that a marriage is void, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a declaration that a marriage is void.

Divorce -
provincial
jurisdiction

2. (1) The legislature of each province may make laws in relation to divorce in the province and has exclusive authority to make laws in relation to relief ancillary thereto.

Divorce
jurisdiction
of Parliament

(2) Parliament may make laws in relation to divorce and has exclusive authority to make laws in relation to the recognition of divorces, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a divorce.

Relationship
between laws of
provinces and
laws of
Parliament

(3) Where the legislature of a province enacts a law in relation to any matter over which it has concurrent authority with Parliament under this section, that law prevails in the province over any law of Parliament in relation to that matter to the extent of any inconsistency.

Declaration
assuming
authority

(4) The legislature of each province may declare that it is assuming authority in relation to all matters over which it has concurrent authority with Parliament under this section and, where the legislature so declares, notwithstanding subsection 3, all laws of Parliament in relation to those matters have no effect in that province while the declaration is in effect

Effect of
Order

3. An order for maintenance or custody made in Canada has legal effect throughout Canada.

Registration
and enforcement
of order

4. An order referred to in section 3 made in any province or territory may be registered in any other province or territory in a court of competent jurisdiction shall be enforced in like manner as an order of that court

Authority to
make laws

5. The legislatures of the provinces may make laws to give effect to the provisions of sections 3 and 4 and may make laws providing for the variation and non-enforcement of orders by reason of a change in circumstances and, in addition, for the non-enforcement of orders on grounds of public policy or lack of due process of law.

Power of
legislature
to confer
jurisdiction
of superior
court judges

6. Notwithstanding section [96], the legislature of each province may confer, or authorize the Lieutenant Governor of the province to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Governor General or by the Lieutenant Governor of the province, as the legislature may determine the jurisdiction of a judge of a superior court of the province in respect of any matters within the field of family law."

4. Add as one of the transitional provisions, the following section:

Continuation
of existing
laws

"XX. Except as otherwise provided in this Act, all laws relating to marriage and divorce that are in force in Canada or any province immediately before the coming into effect of this Act continue in force in Canada and that province, respectively, until such time as they are repealed, altered or replaced by Parliament or the legislature of the province according to the authority of Parliament or the legislature under this Act." *

*NOTE: The wording of this general transitional section will need to be finalized later.

Amendment
Alternative Formulations
Regarding Inland Fisheries, Marine Plants
and Sedentary Species

Supported by
Nine Provinces

- 92.1(1) The Legislature of each province may exclusively make laws in relation to:
- a) inland fisheries in the non tidal waters of the province;
 - b) marine and aquatic plants¹ in the non tidal waters of the province and in tidal waters in or adjacent to the province¹;
 - c) sedentary species in tidal waters in or adjacent to the province;
 - d) aquaculture within the province and in tidal waters or adjacent to the province that is not included in either a), b) or c);

- (2) Notwithstanding paragraph 1(a) the Parliament of Canada may make laws in relation to the determination of total allowable catches for andromous species in non tidal waters and their allocation between provinces and any such law shall be paramount.

Comment

- (1) The Federal government would also wish provision to be made for the protection of the fish habitat and native people's fisheries

Notes

- ¹ Requires definition.

Supported by
Federal Government and
One Coastal Province

The Legislature of each province may exclusively make laws in relation to:

- a) inland fisheries in the non tidal waters in the province.
- c) sedentary species in tidal waters in or adjacent to the province;
- d) aquaculture within the province and in tidal waters or adjacent to the province that is not included in either a) or c);

Notwithstanding paragraph 1(a) the Parliament of Canada may exclusively make laws in relation to sea coast and inland fisheries for andromous species.

Amendment Regarding Sea Coast Fisheries

- (a) Section 91(12) of the British North America Act would be repealed.
- (b) A separate section in the British North America Act, in the following terms, would be enacted.

95A (1) With respect to fish stocks adjacent to each province (as defined in subsection (5) below), the Legislature may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (3) shall have effect in and for the province so long as they are not repugnant to any Act of the Parliament of Canada made under subsection (2).

(2) The Parliament of Canada may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (4) shall have effect in and for any or all of the provinces so long as they are not repugnant to any Act of the Legislature of a province made under subsection (1).

(3) The matters referred to in subsection (1) are:

- (a) fixing parameters for the total allowable catch for stocks;
- (b) the allocation of quotas to foreign countries and the licensing of foreign vessels;
- (c) conservation of fish stocks.

(4) The matters referred to in subsection (2) are:

- (a) fixing the level of catch within the parameters referred to in subsection (3) (a) and the issuance of quotas up to the level so fixed;
- (b) licensing of fishing vessels other than foreign vessels taking fish from the residual quota;
- (c) all matters not referred to in this subsection and subsection (3).

5. (a) The allocation of the fish stocks adjacent to each Province shall be determined by agreement between the Provinces in accordance with equitable principles taking account of all relevant information including traditional fishing patterns.
- (b) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall refer the particular matter in dispute for expeditious arbitration.

CCMC

Draft Amendment to Section 92.1

Submitted By
the Federal Government

FOR DISCUSSION PURPOSES ONLY

DISCUSSION DRAFT TABLED BY
GOVERNMENT OF CANADA OFFICIALS

1. Class 12 of section 91 of the British North America Act, 1867, as amended, is repealed and the following substituted therefor:

"12. Sea coast fisheries except those assigned exclusively to the legislatures of the provinces by subsection 92.1(1)."

2. The said Act is further amended by adding thereto immediately after section 92 thereof the following heading and sections:

Fisheries
powers of
provinces

"92.1 (1) The legislature of a province may exclusively make laws in relation to

(a) fisheries in waters within the province other than tidal waters;

(b) sedentary species in waters within or adjacent to the provinces; and

(c) aquaculture within or adjacent to the province.

Exception for
anadromous
species

(2) Notwithstanding paragraph (1)(a), Parliament may exclusively make laws in relation to sea coast and inland fisheries for anadromous stocks that migrate to sea.

Protection, etc.
of fish habitat

(3) Notwithstanding subsection (1), Parliament may make laws for the protection and enhancement of fish habitat in all tidal waters and in:

(a) the waters of lakes, rivers and canals

extending beyond the limits of any one province; and

(b) inland waters that provide a spawning ground or habitat for anadromous stocks that migrate to sea.

Paramountcy (4) A law made under subsection (2) or (3) prevails over a law made under subsection (1) to the extent of any inconsistency.

Definitions (5) In subsection (1),

"Aquaculture" "aquaculture" means operations in which fish or other marine or aquatic organisms are raised for harvest in an artificially enclosed space;

"Sedentary species" "sedentary species" means marine animals which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil, but for greater certainty does not include crabs, lobsters or scallops;

"adjacent to the province" "adjacent to the province" means (geographical limits to be determined re sedentary species and aquaculture).

Indian fishing rights 92.2(1) Indians have the right to fish for food throughout the year for their personal and community use, both in the province in which they reside and any other area to which an Indian treaty applicable to them applies, on all unoccupied Crown lands and on other lands to which they may have a right of access subject to provincial conservation laws that are reasonably necessary to secure to them a continuing supply of fish for this purpose.

Limitation (2) Subsection (1) does not apply where the right described therein has been expressly surrendered by treaty.

Other rights

(3) Nothing in subsection (1) derogates from or diminishes any other right enjoyed by Indians, whether under treaty or otherwise."

Fisheries
consultation

xx The minister of the government of Canada responsible for fisheries and a minister designated by each provincial government shall consult together at least once in every year, either bilaterally or on a regional basis, on the formulation, coordination and implementation of policies and programmes of the government of Canada respecting fisheries and provincial policies and programmes significantly affecting fisheries.

xxx The Schedule to the *British North America Act, 1930* is amended by:

(a) in portion (1) relating to Manitoba, deleting section 10 thereof and deleting in section 13 the words "and fish" and "and fishing" wherever they appear therein;

(b) in portion (2) relating to Alberta, deleting section 9 thereof and deleting in section 12 the words "and fish" and "and fishing" wherever they appear therein; and

(c) in portion (3) relating to Saskatchewan, deleting section 9 thereof and deleting in section the words "and fish" and "and fishing" wherever they appear therein.

Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Legal Texts forming Appendices
to CCMC Reports to First Ministers

- Resource Ownership and Interprovincial Trade
- Communications
- New Upper House, Involving the Provinces

Ottawa
September 8-12, 1980

Federal Draft as modified by discussions

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

- (1) (present Section 92)

Resources

- (2) In each province the legislature may exclusively make laws in relation to
- a) exploration for non-renewable natural resources in the province;
 - b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
 - c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

and such legislation shall not be invalid merely because part or all of the product may enter interprovincial or international trade.

Export from the Province of Resource

- (3) In each province the legislature may make laws
- (a) in relation to the export from the province to another part of Canada of the primary production from non-renewable resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy; and
 - (b) in relation to the export of such production from the province to other countries but not including [to be determined].

- (3.1) No law authorized under subsection (3) may provide for discrimination in prices or in supplies exported to another part of Canada.

THE SIXTH SCHEDULE

For the purposes of section 92,

- a) production from a non-renewable resource is primary production therefrom if

- (i) it is in the form in which it exists upon its recovery or severance from its natural state, or
- (ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

- b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.

- c) "non-renewable natural resources" includes uranium and thorium.

Relationship to Certain Laws of Parliament

- (4) Nothing in subsection (3) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection, and where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Taxation of Resources

- (5) In each province the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

- a) non-renewable natural resources and forestry resources in the province and the primary production therefrom; and
- b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Production from Resources

- (6) The expression "primary production" has the meaning assigned by the Sixth Schedule.

Existing Powers

- (7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of these subsections.

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

(1) (present Section 92)

(1) Carries forward existing Section 92

Resources

(2) In each province, the legislature may exclusively make laws in relation to

- a) exploration for non-renewable natural resources in the province;
- b) development, exploitation, extraction, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production therefrom; and
- c) development, exploitation, conservation and management of forestry resources in the province and of sites and facilities in the province for the generation of electrical energy, including laws in relation to the rate of primary production therefrom.

(2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g. crude oil, copper, iron and nickel), forests and electric energy. This section pertains to legislative jurisdiction and in no way impairs established proprietary rights of provinces over resources whether these resources are renewable or non-renewable.

Export from the province of resource

(3) In each province, the legislature may make laws in relation to the export from the province of the primary production from non-renewable natural resources and forestry

(3) Provincial governments are given concurrent legislative authority to pass laws governing the export of the resources referred to above from the province. This legislative capacity is in

resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for prices for production sold for export to another part of Canada that are different from prices authorized or provided for production not sold for export from the province.

the sphere of both inter-provincial and international trade and commerce. Provincial governments are prohibited from price discrimination between resources consumed in the province and those destined for consumption in other provinces. This new provincial legislative capacity applies to these resources in their raw state and to them in their processed state but does not apply to materials manufactured from them.

Relationship to certain laws of Parliament

- (4) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (3) prevails over a law enacted by Parliament in relation to the regulation of trade and commerce except to the extent that the law so enacted by Parliament,
- a) in the case of a law in relation to the regulation of trade and commerce within Canada, is necessary to serve a compelling national interest that is not merely an aggregate of local interests; or
 - b) is a law in relation to the regulation of international trade and commerce.

- (4) The effect of this new provincial legislative responsibility over trade and commerce diminishes the scope but does not eliminate the federal government's exclusive authority over trade and commerce. The exercise of the provincial power is subject to two limitations. First, the federal government may legislate for interprovincial trade if there is "compelling national interest". This trigger mechanism may apply to circumstances other than an emergency as established under the peace, order and good government power. Second, federal laws governing international trade prevail over provincial laws in international trade, in effect establishing a concurrent power similar to that for agriculture.

Taxation of resources

- (5) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of
- a) non-renewable natural resources and forestry resources in the province and the primary production therefrom; and

- (5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.

- b) sites and facilities in the province for the generation of electrical energy and the primary production therefrom,

whether or not such production is exported in whole or in part from the province but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Production from resources

- (6) For purposes of this section,
 - a) production from a non-renewable resource is primary production therefrom if
 - i) it is in the form in which it exists upon its recovery or severance from its natural state, or
 - ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil or refining a synthetic equivalent of crude oil; and
 - b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.
- (6) In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, the wording of this subsection is thought to place the appropriate limitations on provincial powers.

Existing Powers

- (7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections.
- (7) This clause ensures that any existing provincial legislative powers found in s.92 are not impaired by the new section.

FEDERAL DRAFT ON COMMUNICATIONS

1. Section 91 of the B.N.A. Act would be amended by adding the four following paragraphs:

91. (w) The frequency spectrum including technical aspects only of frequency assignment.

(x) Interprovincial and international telecommunications services and the technical aspects of telecommunications.

(y) Telecommunications works and undertakings transmitting by broadcasting and telecommunications works and undertaking, other than carrier works and undertakings, providing programming or other services beyond the limits of a province.

(z) The regulation and distribution, including distribution in priority to all other signals through all or any telecommunications undertakings in a province, of a national program service as defined from time to time by Parliament, and the regulation and distribution of non-Canadian programming.

2. Section 92 of the B.N.A. Act would be amended by adding the two following paragraphs:

92. (y) Telecommunications carrier works and undertakings in the province other than:

(a) national and international telecommunications carriers;

(b) space and satellite telecommunications carriers including related earth stations;

(c) carriage on all or any telecommunications carriers in the province of telecommunications for a national purpose.

(z) Telecommunications works and undertakings providing programming or other services in the province and not within the jurisdiction of Parliament by virtue of class (y) of section 91.

3. A provision to the following effect would be added:

Communi-
cations
Consulta-
tions --

The Government of Canada and the governments of the provinces shall consult together at least once in every year, bilaterally or on a regional or national basis, on the formulation, co-ordination and implementation of laws, policies, programmes and practices respecting communications.

CCMC

BEST EFFORTS DRAFT

COMMUNICATIONS

- (1) In each province the Legislature may make laws in relation to telecommunication works and undertakings in the province notwithstanding that such works and undertakings connect the province with any other or others of the provinces, extend beyond the limits of the province, or emit signals originating in the province beyond the province, or receive or distribute in the province signals originating outside the province.
- (2) The Parliament of Canada may make laws in relation to telecommunication works and undertakings mentioned in sub-section (1) other than works and undertakings wholly situate within a province.
- (3) No law enacted by the Legislature of a province or the Parliament of Canada under this section shall in its pith and substance be directed to the disruption of the free flow of information.
- (4) Any law enacted by the Legislature of a province under sub-section (1) prevails over a law enacted by Parliament under sub-section (2) except a law of Parliament in relation to:
 - (a) matters of a technical nature respecting management of the radio frequency spectrum;
 - (b) the space segment of communication satellites;
 - (c) regulation of Canadian broadcasting transmitting network undertakings that extend to four or more provinces, including the re-distribution of their signals by other telecommunications undertakings;
 - (d) foreign broadcast signals, including the re-distribution of these signals by other telecommunications undertakings;
 - (e) the use of telecommunication works and undertakings for aeronautics, radio-navigation, defence, or in national emergencies.
- (5) In the event that the laws of two or more provinces conflict so as to disrupt the free flow of information, one of the provinces may petition the Parliament of Canada to enact a law to resolve the specific conflict and such law shall prevail.

BEST EFFORTS DRAFT

Council of the Provinces

- | | | |
|------------------------------|----|--|
| Council established | 1. | There shall be a body to be called the Council of the Provinces. |
| Membership | 2. | The Council shall have thirty (30) members. |
| Appointment | 3. | The Lieutenant Governor in Council of each province shall appoint three members to the Council. |
| Head of delegation. | 4. | The Lieutenant Governor in Council of each province shall designate one member to be the head of that province's delegation. |
| Tenure of members | 5. | Each member holds office at the pleasure of the Lieutenant-Governor in Council of his respective province. |
| Qualifications | 6. | (a) A member of a provincial legislative assembly may also be a member of the Council.

(b) Subject to (a) the legislative assembly of a province may prescribe the qualifications for its members to the Council. |
| Federal government spokesmen | 7. | The federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in and speak to any matter coming before the Council. |
| Votes | 8. | (a) Each province shall have one vote on every matter before the Council. |

- (b) The vote of each province shall be cast by the head of that province's delegation or his designate.

Ratification 9.. (a) Unless otherwise specified herein, the ratification of any matter coming before the Council requires a two-thirds majority of the votes cast.

- (b) Unless otherwise specified herein the failure of legislation or an appointment to receive the required majority means that the legislation or appointment shall not take effect.

- (c) Legislation on which the Council has made no decision within ninety days from the time of referral shall be deemed to be ratified unless an extension of the time is made by the federal government. Appointments on which the Council has made no decision within thirty days from the time of referral shall be deemed to be ratified.

Powers

10. Matters coming within the following classes shall be referred to the Council for its consideration, debate and disposition according to section 9, namely

- (a) The exercise by the Parliament of Canada of the declaratory power pursuant to section 92 (10) (c).

Powers 10. (b)

Laws of the Parliament of Canada initiating general conditional grants to the provinces in relation to matters within exclusive provincial jurisdiction

(c)

- (i) Laws of the Parliament of Canada made pursuant to the opening words of Section 91 or actions of the Government of Canada pursuant thereto, which have the effect of suspending in whole or in part the normal distribution of legislative powers between the Parliament of Canada and the legislatures of one or more of the provinces, except in cases where there is a state of real or apprehended war, invasion or insurrection.
- (ii) Any measure taken to deal with real or apprehended insurrection will become inoperative fifteen days after having been proclaimed unless it is ratified by the Council.

- (d) Laws of the Parliament of Canada, or sections thereof, which are to be administered by provincial governments.
- (e) Approval of appointments to the managing bodies of such federal boards, commissions or agencies, as are determined from time to time by the Conference of First Ministers, to have significant interest to all or some of the provinces.
- (f) Other matters which have emerged or might emerge in the overall process of constitutional review which Ministers or First Ministers deem appropriate.

Dualism 11. In the case of any matter coming before the Council which is in relation to the French language or French culture the ratification of the Council would require that the two-thirds majority prescribed by section 9 (a) include the affirmative vote of Quebec.

Procedure 12. (a) The Council shall have power to determine its own procedure.

(b) A simple majority only shall be necessary for the establishing of any rules of procedure.

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Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Legal Texts forming Appendices
to CCMC Reports to First Ministers

- Patriation and Amending Formula
- Powers over the Economy
- The Preamble

Ottawa
September 8-12, 1980

BEST EFFORTS DRAFTAMENDMENTS TO THE CONSTITUTION OF CANADA

1. (1) Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly in two-thirds of the provinces representing at least fifty percent of the population of Canada according to the latest general census.

(2) Any amendment made under sub-section (1) affecting:
 - (a) the powers of the legislature of a province to make laws,
 - (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
 - (c) the assets or property of a province, or
 - (d) the natural resources of a province,shall have no effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution prior to the issue of the proclamation, until such time as that Assembly may withdraw its dissent and approve such amendment by resolution.
2. A proclamation shall not be issued under Section 1 before the expiry of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly in each province has previously adopted a resolution of assent or dissent.

3. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces including any such amendment made to provincial boundaries may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly of each Province to which an amendment applies.
4. An amendment may be made by proclamation under section 1, 3 or 9 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.
5. The following rules apply to the procedures for amendment described in sections 1, 3 and 9
 - 1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province,
 - 2) a resolution of authorization or assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized or assented to by it,
 - 3) a resolution of dissent made for the purposes of this Part may be revoked at any time before or after the issue of a proclamation.
6. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

7. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

8. Notwithstanding sections 6 and 7, the following matters may be amended only in accordance with the procedure in section 1(1):

- 1) the office of the Queen, of the Governor General and of the Lieutenant-Governor,
- 2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures,
- 3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies,
- 4) the powers of the Senate,
- 5) the number of members by which a Province is entitled to be represented in the Senate and the residence qualifications of Senators.
- 6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province,
- 7) the principles of Proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada, and
- 8) the use of the English or French language.

9. 1) No amendment to section 1 of this Part, this section, or to any provision in the Constitution with respect to the procedure for altering provincial boundaries shall come into force unless it is authorized in by resolutions of the Senate and House of Commons and assented to by resolution of the Legislative Assemblies of all the provinces.
- 2) The procedure prescribed in section 0 of this Part may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada but, subject to the limitations contained in subsection (1) of this section that procedure may nonetheless be used to amend any provision for amending the Constitution.
10. The enactments set out in the Schedule shall continue as law in Canada and as such shall, together with this Act, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

BEST EFFORTS DRAFT

DELEGATION OF LEGISLATIVE AUTHORITY

Delegation
to
Parliament

(1) Notwithstanding anything in the Constitution of Canada, Parliament may make laws in relation to any matter or class of subjects coming within the legislative jurisdiction of a province.

Consent of
provincial
legislature

(2) No law may be enacted by Parliament under subsection (1) unless, prior to the enactment thereof, the legislature of at least one province has consented to the enactment of such a law by Parliament.

Idem

(3) No law enacted under subsection (1) has effect in any province unless the legislature of that province has consented to the operation of such a law in that province.

Delegation
to legisla-
ture of a
province

(4) Notwithstanding anything in the Constitution of Canada, the legislature of a province may make laws in the province in relation to any matter or class of subjects coming within the legislative jurisdiction of Parliament.

Consent of
Parliament

(5) No law may be enacted by a province under subsection (4) unless, prior to the enactment thereof, Parliament has consented to the enactment of such a law by the legislature of that province.

Extent of
consent

(6) A consent given under this section may be general or specific, may relate to any law or to the enactment of laws in relation to any matter or class of subjects and may include the authority to amend such law or laws.

Enforcement

(7) Parliament or the legislature of a province may make laws for enforcing any law made by it under this section.

Revocation
of consent

(8) A consent given under this section may at any time be revoked.

Effect of
revocation
of consent

(9) Where a consent given under subsection (3) is in relation to any law made by Parliament to which the consent relates that is operative in the province in which the consent is revoked thereupon ceases to have effect in that province.

Idem

(10) Where a consent given under subsection (5) is in relation to any law made by the legislature of a province to which the consent relates thereupon ceases to have effect.

Repeal of
law by
Parliament

(11) Parliament may repeal any law made by it under this section, insofar as it is part of the law of one or more provinces, but the repeal does not affect the operation of that law in any province to which the repeal does not relate.

Repeal of
law by
provincial
legislature

(12) The legislature of a province may repeal any law made by it under this section.

ECONOMIC UNION

121. (1) Neither Canada nor a province shall by law or practice discriminate in a manner that unduly impedes the operation of the Canadian economic union on the basis of the province or territory of residence or former residence of a person, on the basis of the province or territory of origin or destination of goods, services or capital or on the basis of the province or territory into which or from which goods, services or capital are imported or exported.

(2) Nothing in subsection (1) renders invalid a law of Parliament or of a legislature enacted in the interests of public safety, order, health or morals.

(3) Subsection (1) does not render invalid a law of Parliament enacted

(a) in accordance with the principles of equalization and regional development recognized in section ; or

(b) in relation to a matter that is declared by Parliament in the enactment to be of an overriding national interest.

(4) Subsection (1) does not render invalid a law of a legislature

(a) providing for reasonable residency requirements as a qualification for the receipt of publicly provided goods or services

(b) enacted in relation to the reduction of economic disparities between regions wholly within a province that does not discriminate to a greater degree against persons resident or formerly resident outside the province or against goods, services or capital from outside the province than it does against persons resident or goods, services or capital from a region within the province.

(5) Nothing in subsection (2) or (3) renders valid a law of Parliament or a legislature that impedes the admission free into any province of goods, services or capital originating in or imported into any other province or territory.

(6) Nothing in this section confers any legislative authority on Parliament or a legislature.

(7) A law or practice of Parliament or a legislature that is found inconsistent with subsection (1) by final judgment of a court of competent jurisdiction shall stand and be deemed to be valid and operative, unless

repealed or rescinded,
for six months after
the date of the judgment
during which time the
[New Second Chamber]
shall consider the law
and if the [New Second
Chamber] ratifies the
law or practice as being
desirable public policy
notwithstanding that
it is inconsistent
with subsection (1),
the law shall continue
to stand thereafter.

ECONOMIC UNION

121. (1) Canada is an economic union within which all persons may move without discrimination based on province or territory of residence or former residence and within which all goods, services and capital may move without discrimination based on province or territory of origin or entry into Canada or of destination within or of export from Canada.

(2) Neither Canada nor a province shall by law or practice contravene the principle expressed in subsection (1).

REMAINDER OF THIS DRAFT AS IN DRAFT 1.

DRAFT 3ECONOMIC UNION

(ONTARIO PROPOSAL)

121. (1) It is hereby declared
that Canada is an
economic union and

(a) every citizen of
Canada and every
person lawfully
admitted to Canada
for permanent
residence has the
right,

(i) to move to and
reside in any
province or
territory,

(ii) to pursue the
gaining of a
livelihood in
any province or
territory
without
discrimination
based on
residence or
former
residence,

(iii) to acquire and
hold property
in any province
or territory in
Canada, and

(b) all goods, services
and capital may
move freely and
without
discrimination
within Canada based
on the province or
territory of origin
or destination.

(2) Neither Parliament nor a
legislature may enact a
law that in its pith and
substance is inconsistent
with subsection (1).

(3) Neither the Government of
Canada nor of a province
shall engage in any
practice that is intended
to operate in a manner
that is inconsistent with
subsection (1).

THIS DRAFT CAN BE EXTENDED
BY THE PROCESS ENVISAGED
IN SUBSECTION (7) OF DRAFT 1.

ECONOMIC UNION

(SASKATCHEWAN PROPOSAL)

121. (1) Without altering the legislative or other authority of Parliament or the legislatures or of the Government of Canada or the governments of the Provinces or the rights of any of them with respect to the exercise of their respective legislative or other authority:
- (a) Parliament and the legislatures, together with the Government of Canada and the governments of the Provinces, are committed to
 - (i) the maintenance and enhancement of the Canadian economic union,
 - (ii) the movement throughout Canada of persons, goods, services and capital without discrimination by Canada or any Province, by law or practice, in a manner that unjustifiably impedes the operation of the Canadian economic union, and
 - (iii) the harmonization of federal and provincial laws, policies, and practices that affect the Canadian economic union; and
 - (b) pursuant to the commitments specified in clause (a), the Government of Canada and the governments of the Provinces are committed to the ongoing, systematic and co-operative review by them of the operation of the Canadian economic union.

CCMC
TRADE AND COMMERCE

SUGGESTED FEDERAL DRAFT

1. Add to section 91 the following heads of jurisdiction immediately following head 91.2:

2.1 Competition

2.2. The establishment of product standards throughout Canada

2. Add to section 91 the following new subsections:

(2) For greater certainty, "regulation of trade and commerce" in subsection (1) includes the regulation of trade and commerce in goods, services and capital.

(3) The authority conferred on Parliament by heads 91 (2.1) and 91 (2.2) does not render invalid a law enacted by a legislature that is not in conflict with a law of Parliament enacted under either of those heads.

BEST EFFORTS DRAFT

PREAMBLE AND STATEMENT OF PURPOSE OF THE CONSTITUTIONa) Federal Government:

/In accordance with the will of the citizens of Canada,
 the Government of Canada and the Governments of the
 Provinces of Canada have expressed their intention to
 remain freely united in a federation, as a sovereign and
 independent country, under the Crown of Canada/...

b) British Columbia:

(i) /The will of Canadians is that the Provinces of
 Canada choose to remain freely united in a federation
 with a federal government,
 as a sovereign and independent country,
 under the Crown of Canada/...

(ii) /It is the will of Canadians that Canada remain
 united as a federation, as a sovereign and
 independent country, under the Crown of Canada/...

c) Manitoba:

/It is the will of Canadians to remain freely united
 in a federation of provinces, as a sovereign and
 independent country, under the Crown of Canada, with
 a federal /central/ government/...

d) Quebec:

/In accordance with the will of Canadians, the Provinces
 of Canada choose to remain freely united in a federation,
 as a sovereign and independent country, under the Crown
 of Canada /all of which meets with the approval of
 the federal government/...

with a Constitution similar in principle to that which
 has been in effect in Canada.

THE FUNDAMENTAL PURPOSE of the Federation /Constitution/ is 2
to preserve and promote freedom, justice and well-being for 9
all Canadians, by: 10

PROTECTING individual and collective rights, 11
including those of the native people; * 12

ENSURING that laws and political institutions are 13
founded on the will and consent of the people; 14

FOSTERING economic opportunity, and the security 15
and fulfillment of Canada's diverse cultures; 16

/RECOGNIZING the distinct French-speaking society 17
centred in though not confined to Quebec; 18

/RECOGNIZING the distinctive character of Québec 17
society with its French-speaking majority; 18

CONTRIBUTING to the freedom and well-being of 19
all mankind. 20

* This phrase is subject to acceptance by
the native leadership

PRESS RELEASE

September 9, 1980

11:00 AM

SUPREME COURT OF CANADA
B.C. PROPOSALGovernment
Publications


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When the Supreme Court of Canada becomes an instrument of the Constitution as the final adjudicator of national legal issues, it will symbolize to Canadians a new era in the life of the Court. If the Constitutional proposals meet with the approval of all governments, it will mark the end of an era where the Court has been viewed by some as an emanation of just the central government.

British Columbia, therefore, views the Court as an important element in the reform of the Canadian Constitution and one which must be the subject of Continuing indepth consideration in the remaining three weeks.

We make the following proposal which we believe will meet the needs of all Canadians in forming the basis of an agreement on the court.

We propose that the Court consist of eleven Justices whose selection will be determined in the following way:

- 
- (a) Justices of the Supreme Court shall be appointed by the Governor in Council upon the recommendation of a Council of Canadian Attorneys-General; this Council will be made up of the Attorney-General of Canada and the Attorney-General of each province;
- (b) Nominations of Justices by the Council will be initiated by the Attorney-General or Attorneys-General from the appropriate nominating area identified by the Council;
- (c) To reflect the legal duality of the Canadian nation four Justices shall be nominated by the Attorney-General of Quebec;
- (d) to reflect the diversity of the nation, Justices shall be chosen to ensure that the Court reflects the collective experience and background knowledge of all parts of Canada. Representation shall come from all areas of Canada as was attempted in the Federal Bill C-60; a model which British Columbia can accept.

This proposal ensures an immediate additional seat for both the civil and common law jurisdictions. With the changes in the Court which are forthcoming, the Council of Attorneys General will be able to meet regularly and begin the process of deciding how to best reflect Canada's duality and diversity through court appointments.

Note: British Columbia agreed to consider an amendment to the above saying that a nominating council be constituted to select the area from which the judge will come and then the appointment would be made by the Attorney General of the appropriate province and the Attorney General of Canada with a deadlock to be resolved by the Council of Attorneys General.

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Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

British Columbia Position
Fisheries



Ottawa
September 8-12, 1980

FISHERIES

FISHERIES HAVE ALWAYS BEEN IMPORTANT IN THE LIFE OF BRITISH COLUMBIANS.

FISHERIES ARE STILL IMPORTANT TODAY. OTHER INDUSTRIES HAVE CAUGHT UP AND SURPASSED BRITISH COLUMBIA'S FISHERY AS A MONEY EARNER, BUT NONETHELESS, THE HARVEST OF THE SEA IS AN IMPORTANT ELEMENT IN OUR ECONOMIC LIFE AS A PROVINCE.

MORE THAN 25,000 PEOPLE FIND JOBS IN SOME ASPECT OF BRITISH COLUMBIA'S FISHERY. IN 1979, THEY CAUGHT AND HANDLED ALMOST 150,000 METRIC TONNES. THE WHOLESALE VALUE OF THAT FISH WAS ALMOST \$700 MILLION. THE LONG-TERM PROSPECTS FOR THE FISHERY LOOK GOOD DESPITE THE CURRENT DIP IN PRODUCTION.

COMMERCIAL ACTIVITY IS NOT THE ONLY VALUE TO BE FOUND IN THE FISHERY. IT ALSO PROVIDES HUNDREDS OF THOUSANDS OF DAYS OF RECREATION FOR RESIDENTS AND NON-RESIDENTS ALIKE. FISHING IS IMPORTANT TO BRITISH COLUMBIANS FOR MANY REASONS.

AND THIS IS WHY WE, AS A PROVINCE, WANT AN ACTIVE SAY IN THE MANAGEMENT OF THIS NATURAL RESOURCE. FRANKLY, IT IS NOT GOOD ENOUGH THAT A RESOURCE AS IMPORTANT TO US AS FISH BE MANAGED, IN ISOLATION FROM THE REST OF OUR RESOURCE MANAGEMENT CONCERNS.

IN SO FAR AS INLAND FISHERIES, MARINE PLANTS, AQUACULTURE AND SEDENTARY SPECIES ARE CONCERNED, BRITISH COLUMBIA SUPPORTS THE BEST EFFORTS DRAFT WHICH IS SUPPORTED BY NINE PROVINCES.

AS FAR AS SEACOAST FISHERIES ARE CONCERNED WE SHARE, WITH THE OTHER GOVERNMENT'S SEA COAST FISHERY WHO HAVE

SPOKEN ON THIS TOPIC, A DESIRE FOR SHARED RESPONSIBILITY. WE ARE NOT ASKING NOW FOR TOTAL EXCLUSIVE JURISDICTION. OUR REQUEST IS A REASONABLE ONE -- WE WANT TO HAVE A SHARE IN THE MANAGEMENT RESPONSIBILITY.

FISHERIES IN OUR PROVINCE IN THE BROADEST SENSE -- INLAND AND SEACOAST, COMMERCIAL OR RECREATIONAL ARE TAKING ON A GREATER IMPORTANCE TODAY THAN EVER BEFORE. WE ALL KNOW OF THE STRAINS BEING FELT BY THE COMMERCIAL SALMON INTERESTS. OF EQUAL IMPORTANCE ARE THE VERY REAL CONCERNS OF THE RECREATIONAL FISHERMAN. WHETHER FOR COMMERCIAL REASONS, DOMESTIC SPORT FISHING OR OUR FAST BURGEONING TOURIST INDUSTRY, ALL SPECIES OF FISH WHEREVER FOUND - LAKES, RIVERS OR OCEANS ARE IN SERIOUS JEOPARDY. WE IN BRITISH COLUMBIA ARE TAKING POSITIVE STEPS WITHIN OUR JURISDICTIONAL SPHERE TO ADDRESS THIS PROBLEM. RESTRICTIONS ON SPORTS FISHING, FOR EXAMPLE, UNHEARD OF IN PAST YEARS, ARE NOW COMMONPLACE.

STEELHEAD - SEAGOING RAINBOW TROUT - IS ONE OF THE WORLD'S MOST DESIRED AND RESPECTED SPORT FISH. IT IS A TREASURED SPECIES LARGELY BECAUSE OF COMMERCIAL NETS WHICH DO NOT DISCRIMINATE BETWEEN STEELHEAD AND SALMON. THE STEELHEAD FISHERMAN, SEEING HIS SPORT DECLINE, KNOWS HOW MUCH VALUE THERE WOULD BE IN JOINT MANAGEMENT AND RESPONSIBILITY.

THIS IS WHY WE ARE SO SUPPORTIVE OF JOINT FEDERAL-PROVINCIAL INITIATIVES SUCH AS SALMONID ENHANCEMENT PROGRAM. THIS IS WHY WE WISH TO HAVE A GREATER SENSE OF INVOLVEMENT IN NOT JUST CONTROLLING THIS INDUSTRY BUT IN ENHANCING THE RESOURCE.

WE ALSO SEE A GREAT FUTURE IN AQUACULTURE AND MARICULTURE FOR BRITISH COLUMBIA AND AGAIN SEE A VERY IMPORTANT ROLE FOR BOTH GOVERNMENTS. THIS FUTURE, IN OUR VIEW, IMPOSES A VERY SERIOUS JOINT RESPONSIBILITY ON OUR RESPECTIVE GOVERNMENTS.

NONE OF US ARE SO RICH THAT WE CAN MANAGE ANY OF OUR RESOURCES IN ISOLATION FROM EACH OTHER. WE MUST MANAGE ON A MULTIPLE-USE BASIS, RECOGNIZING SOCIAL AND ECOLOGICAL NEEDS AND ECONOMIC REALITIES.

IN SHORT, WE SUPPORT THE NEWFOUNDLAND PROPOSAL WHICH NOW FORMS A PROVINCIAL CONSENSUS OF NINE PROVINCES.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Revised Discussion Draft of
September 3, 1980
The Canadian Charter of Rights
and Freedoms

Ottawa
September 8-12, 1980

REVISED DISCUSSION DRAFT

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Rights and
freedoms in
Canada

1. The Canadian Charter of Rights and Freedoms recognizes the following rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government.

Fundamental Freedoms

Fundamental
freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media; and
- (c) freedom of peaceful assembly and of association.

Democratic Rights

Democratic
rights of
citizens

3. Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Duration of
elected
legislative
bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date of the return of the writs for the election of its members.

Continuation
in special
circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond the period of five years, if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual
sitting of
legislative
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Life, liberty
and security
of person

6. Everyone has the right to life, liberty and security of the person and right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search and
seizure

7. Everyone has the right to be secure against unreasonable search and seizure.

Detention or
imprisonment

8. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or
detention

9. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

Proceedings
against
accused in
criminal and
penal matters

10. Anyone charged with an offence has the right

(a) to be informed promptly of the specific offence;

(b) to be tried within a reasonable time;

(c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(d) not to be denied reasonable bail without just cause;

(e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;

(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and

(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

Treatment or
punishment

11. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-
crimination

12. A witness has the right when compelled to testify not to have any evidence so given used to incriminate him or her in any subsequent proceedings except a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

13. A party of witness has the right to the assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Mobility Rights

Rights of
citizens
to move

14. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of
persons in
Canada to
move, etc.

(2) Everyone in Canada has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

Limitations

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence, and

(b) any other laws referred to in subsections (4) or (5) of section 121 of the British North America Act.

Non-discrimination Rights

Equality before
the law and
equal
protection
of the law

15. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative
action
programmes

(2) This section does not preclude any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

Official Languages

Official
languages
of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.

Status of
languages
and
extension
thereof

(2) In addition, English and French have the status set forth in this Charter, which does not limit the authority of Parliament or a legislature to extend the status or use of the two languages or either of them.

Language Rights

Proceedings
of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Debate of
legislatures

(2) Everyone has the right to use English or French in the debates of the legislature of any province.

Statutes,
etc. of
certain
legislatures

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French.

Statutes,
etc. of
certain
legislatures

(2) The statutes, records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

Idem

(3) The statutes, records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

Both versions of statutes authoritative

(4) Where the statutes of Parliament or a provincial legislature are printed and published in English and French, both language versions are equally authoritative.

Proceedings in Supreme Court and courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court established by Parliament.

Proceedings in courts of certain provinces

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick or Manitoba.

Idem

(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.

Rules for orderly implementation and operation

(4) Nothing in this section precludes the making of such rules by any competent body or authority for the orderly implementation and operation of this section.

Communications
by public
with govern-
ment of
Canada

20. (1) Any member of the public in Canada has the right to communicate with and to receive available services from any head or central office of an institution of the Parliament or Government of Canada in English or French, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communications
by public
with govern-
ment of a
province

(2) Any member of the public in a province has the right to communicate with and to receive available services from any head, central or principal office of an institution of the legislature or government of the province in English or French to the greatest extent practicable according to as the legislature prescribes.

Rights and
privileges
preserved

21. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

Language of
educational
instruction

22. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school levels wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

Provisions
for deter-
mining where
numbers
warrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

Undeclared Rights

Undeclared
rights
and
freedoms

23. The enumeration in this Charter of certain rights and freedoms shall not be construed to deny the existence of any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

General

Laws, etc.
not to apply
so as to
derogate from
declared
rights and
freedoms

24. Any law, order, regulation or rule that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Laws
respecting
evidence

25. No provision of this Charter other than section 12 affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.

Application
to territories
and
territorial
institutions

26. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

Legislative
authority
not
extended

27. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.

Continuation
of existing
constitutional
provisions

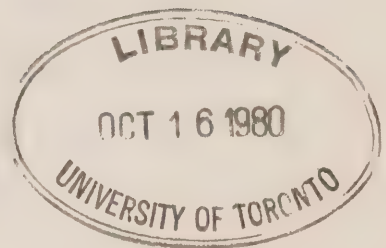
28. Nothing in sections 17 to 19 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (*)

Application
of certain
language
rights

29. A legislature of a province to which subsections 18(2) and 19(2) do not expressly apply may declare that one or both of those subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named there

(*Transitional provisions will be required for repeal of these provisions at an appropriate time.)

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



Text of Opening Statement

by the Honourable

Richard Hatfield

Premier of New Brunswick

September 8, 1980

Ottawa
September 8-12, 1980

TEXT OF OPENING STATEMENT BY
THE HONOURABLE RICHARD HATFIELD
PREMIER OF NEW BRUNSWICK

SEPTEMBER 8, 1980

I believe we are here today to try and determine the kind of Canada we want tomorrow. I can assure you that the people of New Brunswick want to be part of that Canada. They want to work for Canada because they know that after 113 years Canada does work for them.

What we have to do is to try and define what it means to be a Canadian. There are two essential things and perhaps a third that distinguish Canada. One is the relationship that has developed over the years between the Government of Canada and the responsibilities that that government has, and the governments of the provinces, with the responsibilities that they have. It is true that the federal government speaks for Canada; it is true that the federal government carries out and administers the powers that were given to it by what I insist on calling the Constitution of Canada.

But it is also true that the provinces have powers which are very real and very important and the powers the provinces have are exclusive powers that are vital to the people of the province and the way they live their lives within the province and within the country.

Canada, therefore, is, in my view, a unique country because we have been able for so long to so respect and trust each other that we have allowed the federal government absolute powers in certain areas and the provincial governments absolute powers in other areas. I think that balance must be maintained and sustained, and we must never lose sight of that balance as we try to get through the next four or five days.

But just as important and something also which distinguishes Canada and which does work in Canada is that we decided at the outset of this country to respect two languages, and not try to merge the people who lived in Canada in 1867. I think we have been consistently working at the provincial level and federal levels, to move that understanding, and agreement forward; and in my view we have had a great deal of success.

We have moved so far in New Brunswick that we can now take a first step towards something else which might in time again distinguish our country, by acknowledging collective rights in our province. We have taken the first steps in New Brunswick by proposing to the legislature of New Brunswick and to the people of New Brunswick the concept of collective rights the thing that makes New Brunswick unique. We have people there who do speak English and who want to be Canadian and we have people there who do speak French and want to be Canadian.

I must say that it bothers me when we have to qualify what is an historic right by saying we will only do it when numbers warrant because there is an assumption that someone will unduly abuse that right. I don't believe they will. I want to tell you that I speak with some experience, because the French-speaking people of New Brunswick, les Acadiens, have been most responsible in bringing our province to the position where we can be bold enough to recognize collective rights and to recognize the rights of the two languages, and all that comes from those languages in our own province.

The third distinguishing element about Canada which I think is most important but which causes me some concern at this very moment, is the need to sustain and strengthen the process of consent and which again what Canada is all about. It is the consent of the English and French-speaking peoples to live together. I am reminded, and must not lose sight of the fact, that there are people who came to this country and there are people who were born in this country who don't speak either of those languages. But in day-to-day living in Canada it is essential that they make a choice, and that choice is between one of the two official languages of our country.

We must continue the process of consent. As you know, I was involved in four weeks this summer in the meetings that the Ministers had trying to explore the issues that we agreed must be resolved at our First Ministers' meeting at your residence on the 9th of June. I must tell you, Mr. Prime Minister, that I was very impressed with the amount of work that was done. I was very impressed with the dedication of the people who were there who were speaking for their respective governments and the people who were assisting them and advising them. I also want to acknowledge the work done by the Conference

Secretariat. It was immense. It was not the time of year when we normally expect people to work extra hard for long hours, but they did; we all did. We did it, I believe, candidly and openly. What impressed me during those four weeks of discussion was that I sensed that a Canadian consensus was emerging, and that the only thing that could stop it was not giving it enough time.

So, Mr. Prime Minister, I think it is absolutely essential that in order to make the kind of Canada that we want we must respect these three principles, to maintain and respect the legitimacy of the provincial governments and the legitimacy of the federal government, to continue to move forward the rights of Canadians to have, to be taught, to express, and to work in either of the two languages, and to do this by consent.

I think we must give the process of consent time, and then we will have the kind of Canada that everyone will have confidence in, and we will then have the kind of constitution in our country, that will work for Canadians. It is towards that end that I will do my utmost today, and in the next few months and years, to see that we do have a constitution that the people of this country will support, and we will know that they will support it and that they will respect it. Thank you.

Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

British Columbia's Position
on
Family Law Constitutional Issues



Ottawa
September 8-12, 1980

BRITISH COLUMBIA'S POSITION ON
FAMILY LAW CONSTITUTIONAL ISSUES

BRITISH COLUMBIA'S POSITION, IN BRIEF, IS THAT WE WISH TO BE ABLE TO PROVIDE THE MOST EFFECTIVE SERVICE WE CAN FOR FAMILIES IN DISPUTE, AND TO ENSURE THAT THIS SERVICE GETS TO WHERE THE PEOPLE ARE.

OUR PRIMARY CONSTITUTIONAL ISSUE IN THE AREA OF FAMILY LAW IS TO ENSURE THAT OUR PROVINCE CAN VEST PROVINCIAALLY APPOINTED JUDGES WITH FULL JURISDICTION TO HEAR AND DECIDE THE COMPLETE RANGE OF MATRIMONIAL AND OTHER FAMILY DISPUTE PROCEEDINGS.

ONLY BY PROVIDING PROVINCIAALLY APPOINTED JUDGES, AS WELL AS THOSE FEDERALLY APPOINTED, WITH THIS COMPLETE FAMILY LAW JURISDICTION CAN WE ENSURE THAT ALL OF OUR RESIDENTS HAVE READY, TIMELY, AND LESS EXPENSIVE ACCESS TO APPROPRIATE JUDICIAL REMEDIES THAT ARE REASONABLY NEAR THE PLACE WHERE THEY LIVE OR WORK.

AT PRESENT A PERSON WHO HAS TO BRING PROCEEDINGS CAN FACE TWO OR MORE TRIAL COURTS IN ORDER TO GET ALL THE RELIEF SOUGHT - FOR EXAMPLE THE SUPREME COURT FOR CUSTODY CLAIMS, AND THE FAMILY COURT FOR MAINTENANCE ACTIONS - WITH ALL OF THE PROBLEMS OF TRAVELLING GREAT DISTANCES AND OF TRIAL DELAYS CAUSED BY A BACKLOG OF CASES. ALL OF THIS MAY RESULT IN THE PRACTICAL DENIAL OF JUSTICE AT A CRITICAL TIME WHEN RELIEF IS URGENTLY NEEDED.

IN BRITISH COLUMBIA, AT PRESENT A FULL RANGE OF FAMILY LAW JURISDICTION IS BEING EXERCISED ONLY AT APPROXIMATELY 40 SUPREME COURT FACILITIES AND, AT A MAJORITY OF THESE, A JUDGE - FEDERALLY APPOINTED UNDER SECTION 96 OF THE B.N.A. ACT - MAY BE

AVAILABLE ONLY FOR A SHORT PERIOD OF TIME EACH YEAR.

WE ALSO HAVE AN ADDITIONAL 75 PROVINCIAL COURT FACILITIES WHERE A PROVINCIAALLY APPOINTED JUDGE IS RESIDENT AND IS GENERALLY AVAILABLE THROUGHOUT THE YEAR.

THE PROBLEM POSED BY SECTION 96 HAS BEEN GREATLY COMPOUNDED BY THE RECENT RULING OF THE COURT OF APPEAL THAT ONLY FEDERALLY APPOINTED JUDGES MAY HEAR GUARDIANSHIP, CUSTODY AND ACCESS PROCEEDINGS, PROCEEDINGS RESPECTING TEMPORARY POSSESSION OF THE FAMILY HOME AND ITS CONTENTS, AND MAKE ORDERS FORBIDDING THE HARASSMENT OF SPOUSES AND CHILDREN.

THE REASON FOR THE DECISION ESSENTIALLY IS BECAUSE COURTS OF THE LEVEL OF PROVINCIAL COURTS IN ENGLAND BEFORE THE CANADIAN FEDERATION 113 YEARS AGO DID NOT HAVE THE JURISDICTION IN QUESTION.

TRADITIONALLY IN BRITISH COLUMBIA, PROVINCIAALLY APPOINTED JUDGES HAVE HEARD THE BULK OF SUCH CASES IN MANY OF OUR COMMUNITIES. THE MAJORITY OF OUR CANADIAN PROVINCES HAVE VESTED A SIMILAR KIND OF FAMILY LAW JURISDICTION IN THEIR PROVINCIAALLY APPOINTED JUDICIARY. SO IT FOLLOWS THAT THIS RULING OF OUR COURT OF APPEAL MAY HAVE SERIOUS CONSEQUENCES FOR THE COURT SYSTEM FOR OTHER PROVINCES BESIDES THAT OF B.C. UNLESS SECTION 96 IS AMENDED AS PROPOSED.

BRITISH COLUMBIA VERY MUCH AGREES THAT THE LAW GOVERNING ANCILLARY RELIEF (THAT IS MAINTENANCE, CUSTODY AND LIKE ORDERS GRANTED AS PART OF A DIVORCE PROCEEDING) SHOULD BE THE LAW OF THE PROVINCE WHERE THE DIVORCE IS GRANTED.

HOWEVER, AS TO WHETHER THE PROVINCES SHOULD ACQUIRE A CAPACITY TO ENACT LAWS RESPECTING DIVORCE, BRITISH COLUMBIA PLACES A LOW PRIORITY ON THE NEED FOR THE PROVINCES TO ACQUIRE A SHARED JURISDICTION WITH THE FEDERAL GOVERNMENT TO ENACT LAWS GOVERNING THE GROUNDS FOR GRANTING DIVORCES.

WE DO NOT WISH RENO TYPE DIVORCES AND FORUM SHOPPING TO DEVELOP IN OUR COUNTRY, AND IF CONCURRENT FEDERAL-PROVINCIAL DIVORCE JURISDICTION BECAME OPTIONAL IN CANADA NOW, WE WOULD FAVOUR FOR BETTER NATION-WIDE UNIFORMITY THE TRADITIONAL FEDERAL ROUTE.

WE WISH AS MUCH AS POSSIBLE TO ENHANCE THE INTRINSIC VALUE OF THE FAMILY UNIT, CANADA-WIDE, AND HAVE THESE FAMILY LAWS AS UNIFORM AS POSSIBLE.

WE ALSO HAVE CONCERNS THAT PRACTICAL MEASURES NOW DON'T EXIST TO ENSURE THAT ALL FAMILY COURT MAINTENANCE ORDERS, CUSTODY ORDERS AND THE LIKE, GRANTED IN ONE PROVINCE WILL BE RECOGNIZED AND ENFORCED IN OTHER PROVINCES WHERE RECIPROCAL ENFORCEMENT ARRANGEMENTS ARE NOT IN PLACE.

THEREFORE WE INDEED SUPPORT THE MEASURES THAT ARE PROPOSED TO FACILITATE THE RECOGNITION AND ENFORCEMENT OF ALL THOSE ORDERS RIGHT ACROSS THE COUNTRY, AND TO PROVIDE THE BEST SERVICE POSSIBLE FOR OUR CITIZENS WHO MAY BE GOING THROUGH THE RIGOURS OF FAMILY DISPUTE.

September 9, 1980

MEDIA SUMMARY OF BRITISH COLUMBIA'S POSITION ON FAMILY LAW

British Columbia believes the provinces that choose to should be able to authorize appropriate provincial courts to grant divorces and rule on all matters of family law.

Our priority is to provide for families in dispute a service that is accessible, timely and inexpensive.

G.P. Browne, a professor of history at Carleton University, is the author of The Judicial Committee of the Privy Council and the British North America Act (University of Toronto Press, 1967) and editor of Documents on the Confederation of British North America (McClelland and Stewart, 1969).

Government
Publications

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION



On the Entrenchment of a Bill of Rights

by

G.P. Browne

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On the Entrenchment of a Bill of Rights

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20 August, 1980

The meaning of an "entrenched" Bill of Rights

Should the "entrenchment" of a Bill of Rights in our constitution be considered "unnegotiable"? As proposed by the federal government, entrenchment means that the Supreme Court would have the authority -- which it does not have at present -- to disallow laws passed by the federal and provincial parliaments on the ground that these laws contravened our "fundamental" rights.

At first glance, this proposal might seem unexceptionable, even meritorious. On reflection, however, it gives rise to serious objections.

In practice, the entrenchment of a Bill of Rights would do little either to protect our fundamental rights or to promote a more equitable society. On the contrary, entrenchment might lead to a restriction of our liberties and the frustration of certain policies designed for disadvantaged groups.

But in any case, the dispute over entrenchment does not pertain solely, or mainly, to rights at all. It pertains, rather, to the transfer of power -- a transfer from the federal and provincial parliaments to the Supreme Court, and from the provinces to Ottawa.

What entrenchment would amount to, in effect, is that the Supreme Court would become responsible for defining our basic social values. In other words, a legislative authority that presently resides with elected and accountable representatives would be transferred to appointed and tenured judges.

Such an oligarchical development should alarm anyone who believes that parliamentary democracy, for all its weaknesses, is still the best form of government for Canada. If he also fears the consequences of too centralised a federation, his alarm should be magnified.

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This transfer of legislative authority would place a severe, if not intolerable, strain on both our governmental system and our federal structure. It would also amount to a constitutional revolution, entailing the relinquishment of the essential principle of parliamentary democracy: the principle of parliamentary supremacy.

The purpose of this article is to outline the case against entrenching our fundamental rights and to propose an alternative way of safeguarding them. The article is not concerned with the debates over whether we should have a Bill of Rights or over which rights it should include. Moreover, the rights referred to here are those traditionally called, in British and Canadian usage, "civil liberties": they do not comprehend "language rights," which have different implications, would produce different effects, and should be treated separately.

* * * * *

The question of how best to protect whatever legal, political, economic and egalitarian rights we regard as "fundamental" can be clarified if viewed in a historical perspective. Canadians are being offered a choice between two models -- one American, the other British. Both models are based on the guiding principle of "representative democracy," that governmental power should be exercised by the "people" indirectly, through a system of representation. Both also try to protect minorities and individuals against governmental discrimination. But the methods employed to achieve that protection are quite different.

The American method begins with the premise that certain rights are so "fundamental" as to be virtually "inalienable." Neither the theoretical reasoning behind this premise -- its appeal to the Theory of Natural Law -- nor the limits that the American Supreme Court has placed on the "inalienability" doctrine are relevant here. The point is that these rights are placed beyond the power of both the federal and state legislatures to "infringe."

Since they can only be described in general terms, however, these rights must be interpreted to suit particular situations. They must also be modified, continuously and sometimes drastically, to reflect changes in social needs and attitudes. And since the power to make these interpretations and modifications is held by the Supreme Court, this institution has a positive legislative function, in addition to the negative one it exercises by virtue of its power of disallowance over federal and state laws. In relation to fundamental rights, then, the American Supreme Court can be said to "possess supremacy" over the legislatures.

In contrast, the British method begins with the premise that civil liberties are the rights placed at a premium by a particular society at a given time. Neither the practical reasoning behind this premise -- its empirical character -- nor the question of whether parliament is constrained by constitutional conventions is pertinent. The point is that civil liberties are not held to be "inalienable" by parliament, which may accordingly pass laws that infringe them.

This does not mean, however, that these liberties are less valued or, in practice, less secure than in the American system. All it means

is that for the interpretation and modification of their fundamental rights the British prefer to rely, ultimately, on their elected representatives rather than on their judges.

Nor does the principle of parliamentary supremacy mean that judges have no say as to what the law ought to be. They decide not only whether a statute is compatible with other parliamentary legislation but also whether it runs counter to the common law or to conventional customs and usages. In addition, they can comment on the equity and even propriety of a law through their obiter dicta. However -- and this is both the crucial difference between the British and American methods and the issue at stake in the present Canadian debate over entrenchment -- it is parliament, and not the final court of appeal, that ultimately defines the fundamental rights of British Subjects.

* * * * *

At present, the Canadian constitution is founded on the principle of parliamentary supremacy. It is true that since we are a federal state, our Supreme Court, unlike Britain's highest court, may disallow a federal or provincial statute on the ground that it lies outside the jurisdictional authority of the enacting parliament, as set down in the British North America Act. Unlike the American Supreme Court, however, our court may not disallow a statute on the grounds that it infringes a right mentioned in the Bill of Rights.

It is also true that our Supreme Court, like Britain's highest court, may disallow a statute on the ground that it is incompatible with another

statute to which the court assigns priority. Since the general objective is to give effect to the will of a parliament, however, the court tends to favour the statute that most clearly reflects this will, which usually means the statute that is most particularly expressed or recently enacted.

This is why the Canadian Bill of Rights has proved so ineffectual in checking inequitable legislation: since the Bill has no higher status than an "ordinary" statute, it is usually overruled in favour of a statute that the Supreme Court considers to reflect the will of the enacting parliament more clearly.

Much of the popular commentary on judgments of the Supreme Court stems from an ignorance of the principle of parliamentary supremacy, and so from a misunderstanding of what our court, in contrast to the American Supreme Court, may and may not do. On the other hand, while our judges can use obiter dicta to indicate whether impugned legislation runs counter to the Bill of Rights, their customary disinclination to do so has disappointed many civil libertarians. This is one -- though probably not the only or, in some quarters, the principal -- reason for the effort to entrench fundamental rights in the Canadian constitution.

But entrenchment is not the only way to attain a more effective Bill of Rights. Whether or not it has worked satisfactorily for the Americans, this way would not suit us. What we need is some method of affording our Bill of Rights "priority" over "ordinary" statutes -- without taking the ultimate power to define our fundamental rights away from the federal and provincial parliaments or significantly diminishing the legislative authority of the provinces.

In the last section of this article such a method is proposed. But first the case against entrenchment has to be developed. This is done

in the next two sections, where some of the principal arguments are outlined with special reference to Canadian circumstances.

Advocates of an entrenched Bill of Rights usually invoke certain myths. The simplest is that the mere assertion of a commitment to fundamental rights serves to guarantee them. But some of the vilest dictatorships can boast the most elaborate Bills of Rights, many of which are entrenched. And as they denounce the unjust laws and actions for which Canadian governments have been responsible, admirers of the American Bill of Rights might reflect on its failure to prevent gross violations of the freedoms of speech, dissent, religion and the press, let alone to preclude the outrages perpetrated against blacks, communists and Japanese-Americans.

Another myth is that the entrenchment of fundamental rights renders them immutable. But every country with a Bill of Rights has been obliged to adapt it to changes in social needs and attitudes. The most fundamental of all rights -- the right to life -- has been variously interpreted in accordance with differing opinions about abortion, euthanasia and capital punishment.

Nor are impediments to change always beneficial. A right that one generation considers fundamental could obstruct policies that a later generation believes essential. An obvious example is the right "to keep and bear arms," which has hindered gun control in the United States. Others include the rights to "liberty" and "enjoyment of property," which were applied by the American Supreme Court, through its interpretation of the "due process clause," to disallow laws imposing maximum hour and minimum wage standards, prohibiting discrimination against trade unionists, and abolishing child labour.

Moreover, the impediments that could follow from the entrenchment of a Bill of Rights would become especially troublesome because of the

Against an entrenched Bill of Rights: Part I

growing popularity of "affirmative action" programs. Whatever one thinks of them in principle, these programs are being increasingly promoted as a means of helping groups -- such as native peoples or women in general -- who might need to be temporarily favoured in order to counter the effects of past discrimination. As indicated by the Baake case in the United States, however, "affirmative action" could be frustrated by recourse to the "non-discrimination" provisions of an entrenched Bill of Rights.

Such frustration would be extremely hazardous in Canada at this juncture. Francophone Quebecers who are determined to be masters in their own house will insist that affirmative action programs, like those initiated by Bill 101, should be available to them. And francophone federalists, both inside and outside Quebec, might well make similar demands.

It is imperative, then, for the Canadian Bill of Rights to be so general and qualified that it could be easily adapted not only to the changes in social needs and attitudes occurring in every society, but also to our distinctive circumstances, and particularly to the pressing issue of francophone discontent.

The more general and qualified a Bill of Rights is, however, the more room it allows for interpretation, and so the more power it gives to whoever interprets it. Here we come to the central question. This is neither whether our civil liberties would be safeguarded by the entrenchment of a Bill of Rights nor whether such a Bill might serve to impede the

re-definition of those liberties. The central question Canadians must now answer is, rather, Who should ultimately be responsible for defining our fundamental rights? Should we continue with the British method of leaving this responsibility to our parliaments? Or should we adopt the American method, and relinquish responsibility to the Supreme Court?

It is commonly assumed that judges are more apt to protect the rights of minorities and individuals than elected representatives. But while the American Supreme Court has gradually encouraged desegregation over the last twenty-five years, it previously upheld -- indeed extended -- the "separate but equal" doctrine. The labour restrictions created by this court in disallowing laws designed to improve working conditions should also raise queries about the myth of judicial "protection."

This is not to deny that the American Supreme Court has made invaluable contributions to the cause of civil liberty, or to doubt that our Supreme Court could provide a similar service. It must be admitted, as well, that politicians sometimes merit the criticisms levelled against them, and that the parliamentary system is in need of reform. Nonetheless, there are good reasons why no court -- and perhaps especially not the Supreme Court of Canada -- should exercise the definitive legislative authority that attends the entrenchment of fundamental rights.

The wisdom of leaving ultimate decisions on basic social values to a handful of men, who could reach their judgment by a majority of one, is clearly questionable. Whether those judges are sufficiently representative of, or sensitive to, public opinion is highly dubious. Any transfer of legislative power away from elected and accountable representatives should be deplored. And the indirect influence of whoever appoints the members of a Supreme Court cannot be overlooked either.

While there is probably no need to labour such self-evident considerations, the last one raises special questions in Canada. Most American judges are chosen through elections, and although the members of the Supreme Court are appointed by the President, his nominations are subject to the consent of the elected Senate. In contrast, most of our judges are effectively chosen by the federal government, if not the prime minister, following whatever consultations are deemed advisable. There is thus neither an electoral tradition behind our judiciary nor any means by which our parliaments can directly control appointments to the Supreme Court.

The Canadian system can be justified only so long as the legislative power of the courts is confined by the principle of parliamentary supremacy. If that principle were relinquished, it would be necessary to re-consider the entire procedure for choosing our judges, and to give some say to our elected representatives, both federal and provincial, in choosing the members of the Supreme Court. Such a prospect might dismay many Canadians, but the alternative -- of a Canadian Supreme Court with the legislative power but without the electoral connection of its American counterpart -- should be even more repugnant.

Furthermore, whoever chooses the members of a court will influence -- indirectly but inevitably, and sometimes remarkably -- its character and so, in a general sense, its decisions. When a judge is chosen, attention has to be paid to his jurisprudential background, his views on the role of the judiciary, and his general approach to constitutional interpretation. It would be unrealistic to assume that his social, economic and ideological outlooks are not occasionally canvassed as well.

The lack of concern over the way judges are chosen in Canada might also be excused, or at any rate explained, on the ground that they do not play so definitive a role in the making of law as American justices. But if this role were changed, judicial appointments, especially to the Supreme Court, would have to be publicly scrutinized. It is only necessary to review the unease that attends nominations to the American Supreme Court -- all the charges of "packing" by the Presidents, all the suspicions as to judicial "bias," all the characterisings of justices as "conservatives," "liberals," "activists," "positivists" and so on -- to apprehend the consequences.

The unease would be exasperated in Canada by the fact that we have two legal systems: civil law in Quebec and common law in the rest of the country. This difference has meant that the Supreme Court must contain judges from both systems -- but not, so far, that there has to be the same number from each. If the court were to acquire the function of ultimately defining the civil liberties of all Canadians, however, the "dualist" Bench recommended in the Quebec Liberal Party's Beige Paper might be indispensable.

Still further, as the legislative function of the Supreme Court became more apparent, misgivings as to how the social, economic and ideological outlooks of the justices might be affecting their decisions would become rife. A diminution of confidence not just in the Supreme Court but in our legal system could follow, and in turn affect the willingness of the public to abide by the Rule of Law, and hence both our sense of community and the stability of our society.

As a corollary, interest in, if not respect for our political system could also diminish. Our elected representatives have already lost far too much authority -- to the governments, bureaucracies, political parties and pressure groups. Now they are being threatened with the loss of more -- to the judiciary. Surely we should be trying to do exactly the opposite: to bolster their position rather than to weaken it still further by taking away their power of ultimately defining our fundamental rights.

To raise the possibility of such repercussions might seem alarmist, and different assessments will be made of both their probability and their importance. Even so, it would be not only thoughtless but irresponsible to discount them completely. Canadians cannot be too cautious, or sceptical, about any changes that would appreciably increase the legislative authority of the judiciary and decrease that of our parliaments.

Against an entrenched Bill of Rights: Part II

For a Bill of Rights with "priority status"

Another argument against entrenching the fundamental rights of Canadians is that this would significantly affect both the amount and type of legislative power available to the provinces. To judge by the American experience, an entrenched Bill of Rights would tend to centralize authority in any federation, certainly if the federal government had a preponderant say in appointments to the Supreme Court. But there are exceptional reasons why this effect would be pronounced in the case of Canada.

When legislative powers are distributed in the constitution of a federal state, provision must be made for any that are not specifically allocated. This "residual" authority then becomes a powerful determinant in the shaping of the federation because it serves as the compartment into which the Supreme Court usually consigns powers that are created when governments take on new functions.

It is generally agreed that in the British North America Act "residual" authority was conferred on the federal parliament under the "Peace, Order and good Government" clause of Section 91. Then, in Section 92, subsection 13, the provincial parliaments were given the "exclusive" legislative authority to make laws in relation to "Property and Civil Rights in the Province." What happened, however, is that through a number of judicial interpretations, the "Peace, Order and good Government" clause was effectively restricted to "emergency" situations, while Section 93 (13) became not only another but, under "normal" circumstances, the principal "residuary" clause. As a result, the provincial parliaments can now claim a residual authority that is both presently and potentially of considerable scope.

it would obscure, and might detract from, both the most memorable lesson of our constitutional history and the most valuable symbol in our constitution. Our experiences have taught us that legislative power must not be too widely dispersed, and that ultimate authority should be held by those lawmakers who are most directly accountable to the electorate. The "symbol" of that lesson is the principle of parliamentary supremacy.

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Neither these arguments nor the many others that could be developed against the entrenchment of fundamental rights imply, however, that Canadians must be content with the present arrangements. It is possible to obtain an effective Bill of Rights without relinquishing the essential principle of parliamentary democracy or appreciably weakening provincial authority.

The key to the reconciliation of these apparently contradictory objectives is to contrive a Bill of Rights with "priority status" -- that is, an "overriding authority" in relation to the "ordinary" statutes enacted by the federal and provincial parliaments. If such a Bill were in force, the Supreme Court would be responsible for not only deciding, as it now does, whether an impugned law fell within the legislative jurisdiction of the enacting parliament, but also for declaring, as it is now usually reluctant to do, whether that law ran counter to the Bill of Rights. However -- and this would be the primary difference between our system and the American -- a law that the Supreme Court decided was within

the jurisdiction of the enacting parliament but incompatible with a fundamental right could still be passed, providing it fulfilled certain requirements.

What these requirements would depend on our estimate (which could change with experience) of the degree to which our parliaments need to be curbed in order to protect the rights of minorities and individuals. Initially, it might be enough simply to require a delay before the law went into effect. The purpose of this delay would be to allow time for protesters to renew their opposition, which would now be supported by the Supreme Court's declaration, and for the government concerned to reconsider its policy in the light of these objections. If a stronger curb were found to be necessary, the parliament involved could be required to re-enact the law, possibly after a certain interval. An even more powerful curb could be imposed by requiring such laws to be supported by a certain proportion of representatives, the idea being that a simple majority in a parliament should not suffice.

But the question of which requirements to impose -- and others are available -- can be decided later. First the governing principle has to be accepted. This is that in whatever way and however much the federal and provincial parliaments are curbed, they must retain the ultimate responsibility for defining our fundamental rights.

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There is nothing fantastical, complicated or even novel about these proposals. The principle of leaving ultimate law-making power with our

parliaments has been defended not only by Premiers Lyon and Lévesque but also by a number of distinguished statesmen, judges, lawyers and scholars. The practicability of a Bill of Rights with "priority status" has been confirmed by various experts and, on the political level, was reportedly suggested by the most principled of the participants at the last First Ministers' meeting. Some of the requirements that could be imposed to ensure this priority are utilized, for other purposes, in various parliamentary systems. And followers of British events will recognize similar proposals in the arguments of such converts to a Bill of Rights as Lords Hailsham and Wade, as well as in the recommendations of Tory, Labour and Liberal representatives.

A Bill of Rights with "priority status" could help to protect the civil liberties of Canadians and promote public concern for our fundamental rights. On the other hand, such a Bill would not produce the political and legal rigidity, or the transfer of legislative power from the parliaments to the courts, or the diminution of actual and potential provincial authority that would attend an entrenched Bill.

Experimentation with various requirements to ensure the priority of the Bill of Rights would introduce a much-needed element of gradualism, enabling us to adjust the system as experience dictated, and to stop short of the American extreme of judicial supremacy. This gradual approach would also give the Supreme Court the opportunity, for which some of its members have pleaded, to establish a jurisprudential foundation for its new responsibilities.

Lastly, the protagonists on all sides would be able to demonstrate their commitment to the cause of liberty. If the proponents of an

entrenched Bill of Rights are only concerned about fundamental rights, are resolved to maintain the parliamentary system, and are not trying to centralise the federation indirectly, they should be able to accept the principle of ultimate parliamentary supremacy. And with that principle firmly established, perhaps even entrenched, those who are presently wary of the federal government's manoeuvres could agree to the inclusion of a Bill of Rights with "priority status," or "overriding authority," in the Canadian constitution.

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The dispute over the entrenchment of our fundamental rights is obviously too complex to be covered in a newspaper article. But something must be done to present a less restricted view than has been afforded the public so far and, in particular, the case against entrenchment must be dealt with much more thoroughly and carefully. At the very least, exception must be taken to some of the federal government's latest assumptions. Entrenchment should not be considered "unnegotiable," it should not be treated as part of a "package for the people" as opposed to a "package for the governments," and it should not be attempted through either unilateral action by the federal authorities or a direct appeal to the public.

Canadians must understand clearly what is at stake. The question is not whether we should have a Bill of Rights, but whether we should entrench it. This means, in practical terms, that we must decide whether to leave the ultimate responsibility for defining our civil liberties with the federal and provincial parliaments, or to hand it over to the Supreme Court.

There should be no hesitation over this question. Our constitutional history, governmental system, federal structure, cultural needs, and social ideals all dictate the answer. In the last resort, our elected and accountable representatives must retain the authority to define our basic social values. The Canadian constitution, for all its federal qualifications, was founded on this essential principle of parliamentary supremacy, and so long as we wish to remain a parliamentary democracy, this will be the one principle we cannot relinquish.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Notes for a Statement
by the
Prime Minister of Canada
on
Offshore Resources

Ottawa
September 8-12, 1980

OFFSHORE RESOURCES

Premiers will recall that the offshore resources item was first included on the constitutional agenda at the request of the provincial governments in October 1978. The apparent potential for vast oil and gas reserves, particularly off the shores of Eastern Canada, makes the resolution of this matter very important for the economic future of several provinces, and for the achievement of Canada's energy goals.

We believe that the exclusive jurisdiction of the federal government over the offshore is clear. According to international law and Canadian law, Canada owns the territorial sea, which extends out to twelve miles. The federal government also has exclusive authority to make laws for this area. Beyond the twelve-mile limit, the Government of Canada has exclusive legislative jurisdiction over the mineral resources of the Continental Shelf when these resources are within two hundred miles of the shore.

However, I do not intend to debate ownership. That question can only be settled by the Supreme Court of Canada. We propose to leave it in suspense. We make this proposal because we completely agree that the major benefits of the development of offshore resources should accrue to the residents of the coastal provinces.

For this reason, we propose that until they become "have" provinces, the coastal provinces should receive the same kinds of revenues as are derived by provinces from onshore resources. Beyond that point, they would share an increasing proportion of offshore revenues with all Canadians. The formula we have in mind would ensure that the Province of British Columbia, even though it is already a "have" province under the equalization formula, would nevertheless receive a reasonable share of offshore resource revenues.

The federal government believes that when a province grows wealthy enough to stand on its own feet, it should then begin to share its wealth with the rest of the country. That is the vision of Canada we are offering to Canadians, one where we all grow strong by helping each other.

We have accordingly proposed a system of administration of offshore mineral resources involving the federal government and each of the coastal provinces. They will have a say, a major say, in how these resources are developed and as I have said, the federal government wants the coastal provinces to derive maximum benefits from offshore resources.

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